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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA  
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THE HONORABLE DALE S. FISCHER, JUDGE PRESIDING  
  
United States of America, )  
Plaintiff, )  
)  
vs. ) Case No. CR 05-316-DSF  
)  
William H. Nurick, )  
Defendant. )  
\_\_\_\_\_ )

REPORTER'S TRANSCRIPT OF TRIAL PROCEEDINGS

Day 4

Los Angeles, California

Tuesday, September 13, 2011

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Official Reporter  
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25

1 Los Angeles, California, Tuesday, September 13, 2011

2 7:45 a.m.

3 -oOo-

4 (Jury Out)

5 THE COURT: Good morning. I got the message about the  
6 jury instruction, and I have made revisions. Now that I'm  
7 looking at it, though, I don't know that it makes sense to have  
8 these brackets in here around John Biber's name because the jury  
9 won't know what that's -- I assume the brackets are because it's  
10 not directly from the Indictment, but the jury won't know what  
11 that is supposed to mean.

12 MS. HENDRICKSON: Yes. So I put the brackets there  
13 for the Court to make that determination. In the Indictment it  
14 just says *his friend*, but from the testimony it's clear that it  
15 is Mr. Biber.

16 THE COURT: Mr. Lombard?

17 MR. LOMBARD: No objection to that, your Honor.

18 THE COURT: To what?

19 MR. LOMBARD: To leaving it *John Biber*.

20 THE COURT: I will take out *friend* and just have *John*  
21 *Biber* without brackets?

22 MR. LOMBARD: Yes, your Honor. There's a question  
23 whether he's a friend at this point.

24 THE COURT: Is there anything else we need to talk  
25 about before the jury comes in?

1 MS. HENDRICKSON: Regarding the Genesis stipulation,  
2 your Honor, when would you like us to read that to the jury?

3 THE COURT: It's up to you. I'm not sure whose case  
4 it's in, but --

5 MR. LOMBARD: I'd prefer to have it after Mr. Laffer  
6 testifies.

7 THE COURT: That's fine.

8 MR. LOMBARD: With regard to Defense Exhibit 1013, I  
9 would also offer it under a residual hearsay exception as well,  
10 your Honor.

11 THE COURT: Okay. I don't think -- whether it's  
12 business record is unclear. To the extent I have discretion to  
13 decline to admit it, I would. I think more importantly, though,  
14 it's just not relevant. What Ms. Nguyen told Mr. Schulman in  
15 2002 about what she said to Nanette Davis at an earlier time is  
16 not relevant. Even what she said to Ms. Davis is not  
17 necessarily relevant.

18 What is relevant is what Ms. Nguyen told Mr. Nurick.  
19 She testified fully about that subject. He testified  
20 consistently. Is the government going to suggest otherwise with  
21 regard to the testimony?

22 MS. HENDRICKSON: No, your Honor.

23 THE COURT: There's just no issue. The memo isn't  
24 relevant. It could have been used to impeach her if she'd  
25 testified differently, but she didn't, so it's more of a

1 relevance issue than anything else, and so I'm not going to  
2 admit it.

3 MR. LOMBARD: May I make a record, your Honor?

4 THE COURT: Yes.

5 MR. LOMBARD: Certainly what's relevant is  
6 Ms. Nguyen's advice to my client, and what she's memorialized  
7 here is what she told my client and her explanation as to the  
8 basis for her advice. Whom she told it to, yes, I understand  
9 the Court's position, but certainly what she told him is the  
10 issue.

11 I do think it's relevant, and the Court certainly has  
12 discretion, and I do think any prejudicial nature is minimal  
13 regarding the probative value of what it shows she told him.  
14 And I would submit, your Honor, that the point is to the extent  
15 it is relevant, that the point here is not to allow the jury to  
16 have evidence that they can -- that's reliable and that's  
17 trustworthy, and her testimony was replete with *I don't recall,*  
18 *it was ten years ago, I don't know.* I attempted to refresh her  
19 recollection several times, and she admitted *it says that here*  
20 *at times,* but the record is clear that it was a long time ago,  
21 and certainly this is a document that she says she authored  
22 close in time to when it was authored. She is familiar with the  
23 contents of it, and it would be a reliable and trustworthy piece  
24 of evidence. It wouldn't mislead them, and it does say what, in  
25 fact, she told Nanette Davis what she advised her client, and so

1 to that extent I would offer it as an exhibit.

2 THE COURT: Again, what she told Nanette Davis about  
3 what she said to Mr. Nurick is really only relevant to two  
4 things: one, to refresh recollection if she didn't recall; two,  
5 to impeach if she had testified differently. Again, the  
6 government is not going to make any issue of it. I mean, you  
7 kept saying that she testified she didn't recall, but I don't  
8 think she said that about this particular issue. I can go back  
9 and look. I think when you started to ask her about this, she  
10 said she did recall.

11 I think it's more problematic because if it came in at  
12 all, it would come in completely redacted, except for that  
13 paragraph. Obviously the rest of it doesn't come in, so as I  
14 said, I can go back and try to look at that testimony and see,  
15 but I think when you started to ask her about this, she did say  
16 she recalled this advice that she had given him.

17 MR. LOMBARD: The part is that really, your Honor --  
18 number two talks about checking Aztec Irrevocable Trust, and  
19 certainly I do recall her testifying that there were too many  
20 uncertainties and that she did advise him to answer no. She did  
21 testify to that, and I agree with that.

22 The part below that, however, is the more interesting  
23 and relevant part because it explains the context -- puts in  
24 context her reason on advising him that, and what she says is  
25 *Most Offer in Compromise applications take approximately six to*

1     *nine months from the date an offer is submitted to be assigned*  
2     *to a field office. When the case is assigned to a field office,*  
3     *the IRS agent assigned to the case will ask for updated*  
4     *information and most recent supporting documentation; i.e., bank*  
5     *statements, copies of paycheck stubs and proof of expenses. I*  
6     *advised Mr. Nurick if there were changes to be made, usually we*  
7     *would have an opportunity to do so when the case is assigned to*  
8     *an Offer in Compromise agent.*

9             Now, she didn't recall that testimony as it relates to  
10     answering question 19-F on the 433-A, which is --

11             THE COURT: Did or did not?

12             MR. LOMBARD: Well, that's the part that I was  
13     attempting for her to recall.

14             THE COURT: But when you say *didn't*, you swallow the  
15     last part, so I never know whether you are saying *did* or *did*  
16     *not.*

17             MR. LOMBARD: Oh, that's what she did not recall from  
18     my recollection of the examination. She did say, *Generally*  
19     *speaking, yes, I advised him we could change something when the*  
20     *Offer in Compromise was submitted, but I believe that was in*  
21     *connection with the omission of the truck on the 433-A form. I*  
22     *do think it's -- it is somewhat hyper-technical of an issue, but*  
23     *at the same time, the Aztec account had a significant amount of*  
24     *money in it, and for it to be excluded from the Offer in*  
25     *Compromise is certainly a -- something the government will*

1 address and I will address, but it was based on her advice that  
2 it would be assigned because of the uncertainties, it would be  
3 assigned to -- once it was assigned to a revenue officer, then  
4 it could be addressed later.

5 THE COURT: It's not clear to me from this memo what  
6 that first couple of sentences in the second paragraph of 2  
7 means. This could be what she was telling Mr. Schulman as  
8 opposed to what she told Mr. Nurick, because she doesn't start  
9 off that paragraph by saying, *I advised Mr. Nurick that most*  
10 *Offer in Compromise applications*. That looks like something she  
11 was explaining to Mr. Schulman, presumably a non-tax lawyer, and  
12 then she says, *I advised Mr. Nurick if there were changes to be*  
13 *made*.

14 MR. LOMBARD: I've made my record.

15 THE COURT: Thank you.

16 Anything else before the jury comes in?

17 MR. LOMBARD: Is there a cup I could have for water?

18 THE CLERK: Yes.

19 THE COURT: Sure. I'm going to go make these changes.

20 (Recess taken)

21 (Jury In)

22 THE COURT: Good morning. Everyone is present.

23 Mr. Lombard, would you like to call another witness?

24 MR. LOMBARD: Thank you, your Honor. Defense calls

25 Martin G. Laffer to the witness stand.



1                               Martin G. Laffer, was sworn

2                   THE CLERK: Please step forward to the witness stand.  
3 State your full name for the record and spell it.

4                   THE WITNESS: My name is Martin G. Laffer,  
5 L-A-F-F-E-R.

6                   THE COURT: You may proceed.

7                   MR. LOMBARD: Thank you, your Honor.

8                               DIRECT EXAMINATION

9 BY MR. LOMBARD:

10 Q. Good morning, Mr. Laffer.

11 A. Good morning.

12 Q. Mr. Laffer, where do you work?

13 A. I -- I work at -- as a partner in a CPA firm called Laffer  
14 & Gottlieb in West Los Angeles.

15 Q. How long have you worked for Laffer & Gottlieb?

16 A. The firm was started in 1982.

17 Q. Are you the *Laffer* in Laffer & Gottlieb?

18 A. I am.

19 Q. And what are the areas of practice that Laffer & Gottlieb  
20 work in?

21 A. Well, we're considered a forensic accounting firm. We do  
22 primarily litigation, forensic-type accounting, tax controversy,  
23 and we have a very small tax practice. We prepare maybe 150 tax  
24 returns a year.

25 Q. What did you do before going into private practice for

1 Laffer & Gottlieb?

2 A. When I graduated from college, I worked for KPMG for two  
3 years, which is an international accounting firm, and then I  
4 went to work for the IRS as a special agent or criminal  
5 investigator with -- at that time it was the Intelligence  
6 Division. Now it's referred to as the Criminal Investigation  
7 division. And I did that for approximately nine years.

8 And then for two years after that, I was working with  
9 a tax lawyer doing some real estate syndication and asset  
10 management, property management, and then in 1982, started my  
11 practice, which evolved into Laffer & Gottlieb.

12 Q. Do you have any advance degrees in taxes or tax accounting?

13 A. Well, I have a Bachelor of Business Science degree from  
14 Pace University, New York, and then I have a Master of Science  
15 in business administration with an emphasis in finance from  
16 Cal State Northridge.

17 Q. Do you have any special licenses?

18 A. Well, aside from a CPA license, which is issued by the  
19 state of California, I have a designation by the American  
20 Institute of CPAs. It's called a CFF credential. It's  
21 Certified and Financial Forensic. And then the American -- the  
22 Association of Certified Fraud Examiners, I have a designation  
23 as a Certified Fraud Examiner, CFE.

24 Q. Have you given any lectures on any topics involving income  
25 tax?

1 A. Yes.

2 Q. What kind of lectures have you given?

3 A. Well, many years ago I taught tax law to IRS agents in  
4 Glencoe, Georgia at the law enforcement training center, and  
5 over the years, I've lectured on various tax topics, tax  
6 procedures. I do a lot of lecturing at Cal State Los Angeles at  
7 their extension program, which is a program for continuing  
8 education for CPAs and attorneys. And I -- you know, I have  
9 lectured to various business groups and to various law firms  
10 about taxes and accounting matters.

11 Q. Have you authored any documents regarding taxes?

12 A. Yes.

13 Q. What kind of documents have you authored?

14 A. Well, I've written a number of articles, professional  
15 articles about tax procedures. I wrote an article advocating a  
16 national tax amnesty program that was published in the  
17 *Wall Street Journal* years ago and various topics. The  
18 California Society of CPAs has a website, and I have had a  
19 number of articles published about the different tax issues.

20 Q. Are you a member of any professional groups in your area?

21 A. I belong to the American Institute of CPAs, the California  
22 Society of CPAs, and I'm on a forensic litigation -- forensic or  
23 litigation committee, state committee where I'm an officer of  
24 the committee, and I'm the treasurer for two years.

25 Q. Have you ever testified in court before?

1 A. Yes.

2 Q. How often have you testified?

3 A. I couldn't tell you. When I was with the IRS, I used to  
4 testify as an expert witness similar to what Ms. Pugh did, and  
5 since being in private practice I have testified many times in  
6 federal court and state court.

7 Q. When is the first time you were admitted as an expert in  
8 federal court?

9 A. Probably in 1972 or '73.

10 Q. Have you reviewed documents in the case of United States  
11 vs. William Nurick?

12 A. Yes, I have.

13 Q. Have you listened to the testimony of the witnesses that  
14 have taken the stand in this case?

15 A. Yes.

16 Q. Have you interviewed witnesses in this case?

17 A. Yes.

18 Q. Who have you interviewed?

19 A. Well, I have interviewed -- I have spent a lot of time with  
20 Mr. Nurick. I spent some time with Jay Lashlee, and I am trying  
21 to remember who else. There were several other people. They  
22 may not have testified at the trial.

23 Q. Did you interview Ms. Lyly Nguyen?

24 A. Tried to, but I did not.

25 Q. Why is that?

1 A. She refused to meet with me.

2 MR. LOMBARD: Your Honor, I would offer Mr. Laffer as  
3 an expert in taxability issues and tax procedures at this time.

4 THE COURT: Any objection?

5 MS. HENDRICKSON: No objection.

6 THE COURT: All right. He is accepted.

7 BY MR. LOMBARD:

8 Q. Mr. Laffer, let me start with the concept of amending  
9 taxes. Can you tell the jury what a taxpayer's duties and the  
10 outline of the procedures of taxes when you realize you have to  
11 amend taxes or there is a tax deficiency, I should say.

12 A. There is a presumption that when an income tax return is  
13 filed, it is correct. There is a procedure and forms by which  
14 you could amend an incomes tax return to make a change to it, to  
15 correct it, whether it's reporting additional income or  
16 reporting additional expenses or deductions. However, there's  
17 no requirement, there's no duty -- there is no requirement for  
18 an individual to amend an income tax return.

19 Q. What is the statute of limitations for an individual who  
20 is -- who notices there is a deficiency in his reporting of his  
21 income tax return?

22 A. The civil statute of limitations to amend a tax return is  
23 three years. If you filed a tax return within the past three  
24 years and you realize that you had additional deductions, you  
25 have three years in which to claim a refund for the overpayment

1 of the taxes.

2 And likewise, if the return is not audited by the IRS  
3 within the three years, then it's deemed to be accepted as  
4 filed.

5 Q. What does *deemed to be accepted as filed* mean?

6 A. Well, that after three years, it can't be audited. And,  
7 you know, everything I say there are exceptions to, but  
8 essentially after three years, the IRS can't audit a tax return.

9 Q. Did you prepare a schedule in connection with this case?

10 A. Yes, I did.

11 MR. LOMBARD: Court's brief indulgence?

12 THE COURT: Sure.

13 (Counsel confer off the record)

14 BY MR. LOMBARD:

15 Q. Mr. Laffer, I'm going to show you the stipulations to  
16 admissibility of 1019. That is Defense Exhibit 1019. I have to  
17 zoom in here.

18 Do you recognize this document?

19 A. Yes, I do.

20 Q. What is it?

21 A. It's a schedule of payments from Genesis and -- to various  
22 Nurick entities, as well as payments from Genesis to the person  
23 that we've heard reference to, Andre Tinoco Arnoldo, and it  
24 compares the amount that was paid to Mr. Nurick and his related  
25 entities, comparing that to his tax return.

1 Q. Who prepared this document?

2 A. I did.

3 Q. In preparing this document, what did you rely on to get  
4 these figures?

5 A. Well, we summarized disbursements that we were able to find  
6 in the Genesis bank records and also deposits that Mr. Nurick  
7 made to his various entity accounts. Mr. Nurick's records were  
8 more complete than the Genesis records. As Ms. Pugh testified  
9 earlier, the records were incomplete and voluminous, and it was  
10 kind of a big mess, actually.

11 Q. So could you explain to the jurors, starting from the  
12 left-hand side going right, row at a time, what we're looking  
13 at.

14 A. Okay. Well, the top section is captioned *Genesis Income*.  
15 And Mr. Nurick, as you know, had a number of entities, and this  
16 reflects by year the payments that we were able to -- that we  
17 were able to trace from Genesis into the various accounts. So,  
18 for example, in 1995, I show that this I-Control NB Account  
19 Trust received \$78,362.03. And in '98, it was 32,000. The  
20 other entities, particularly NG Enterprises, didn't receive  
21 anything until 1999, at least what we were able to trace. And  
22 you can just go along the chart.

23 In 2001, there were payments to the Aztec Irrevocable  
24 Trust. That's in 2000, 2001, and then in 2002,  
25 TaxLawServices.com, Inc., which is Lyly Nguyen's company, that

1 was the name of her company, her law practice, there was an  
2 account that was set up in trust for Aztec. That received  
3 \$127,000 in 2002.

4 And then the next section is monies that were received  
5 for the sale of Genesis' interest that when Mr. Nurick divided  
6 up his interest in Genesis, between two-thirds that he sold to  
7 this Andre Tinoco and one-third that was actually the Aztec  
8 account, that was his one-third interest, the remainder  
9 interest, and the payments from Genesis -- I'm sorry -- the  
10 payments that -- that Mr. Nurick received from Andre Tinoco for  
11 the sale of his Genesis interest started out in 1999, there were  
12 some third-party checks that Mr. Nurick asked Tinoco to write  
13 payments to. I believe those were out of the Luna account. So  
14 there was \$21,000 of checks paid to third parties. And then in  
15 19 -- in 2000, Mr. Tinoco paid a total of \$261,000 to Mr. Nurick  
16 through Nurick & Associates, to his wife Eleanor, to Nurick's  
17 personal account, some additional checks paid to third parties,  
18 and then there was a cash payment on October 10, 2000, to Nurick  
19 for \$10,000.

20 So we were able to trace those so the first part is  
21 the income from Genesis to Nurick or Nurick-related entities,  
22 and the second part are the payments from Tinoco to these -- to  
23 these Nurick entities.

24 And then the part down here, the third part -- I'm  
25 not -- here it is. The third part -- and it's hard for me to



1 read. It's kind of fuzzy up here so I'm reading my chart in my  
2 book. But this third part are payments that Genesis made to  
3 Tinoco and -- vis-à-vis this Luna de Los Crestones account, and  
4 I have that broken out. That began in 1999, and we broke it  
5 out. There was a Luna account, the Interfin or Banco Interfin  
6 in Costa Rica, there were payments made in '99, 2000, 2001, and  
7 then there was a Luna de Los Crestones in Belize, and there were  
8 payments made in 2001 and 2002. So that's the disbursement part  
9 or the income part that was disbursed out to Nurick or to  
10 Tinoco's entity.

11 And then on the bottom part of the chart, right --  
12 right here -- it's like trying to hit a moving target here. On  
13 this part right here, this is the Genesis-related income that  
14 was reported on Mr. Nurick's tax returns, and he began reporting  
15 the income in 1999 --

16 Q. Is that right here?

17 A. That's -- yes. The \$285,000 that was the income in 1999  
18 that Mr. Nurick reported. Schedule D is where you report  
19 capital gains. So that was the \$285,000, and then the  
20 Schedule E is for partnerships, S corporations, trust accounts,  
21 and I believe that in -- in 2001 and 2002 -- let's see. 2002  
22 and 2003, sorry, that on his Schedule E he reported income from  
23 these pass-through trusts on his Schedule E, and so that was  
24 reported. That was Genesis related as well.

25 Q. Is that right here?

1 A. Yes. That's the \$107,000 and the \$9,200. And then in  
2 2001, he reported \$11,646 as other income from Aztec, and that  
3 was reported as ordinary income on his tax return. I think that  
4 should have been a capital gain.

5 But basically if you look at the schedule, there is a  
6 squiggly line and an A in the total column on the right-hand  
7 side which is totaling up the amount of income Mr. Nurick  
8 received from Genesis, which the total for the -- all of the  
9 years in the entities was \$579,000. Go down. No. The other  
10 way down. There you go. This number right here -- -- down a  
11 little more. No. Down. Down, down. You're going up.

12 Q. Okay.

13 A. Okay. Stop. Okay. So the total that was paid to Nurick  
14 and his related entities for all of these years that I was able  
15 to trace -- and I believe my numbers are slightly higher than  
16 the government's, but I don't think it really matters, but he --  
17 you told me if I circle this thing, it's going to circle. The  
18 579,000 -- it's the fifth number down on the right-hand side.  
19 There you go. So that's the total that was paid to Nurick or  
20 Nurick-related entities from Genesis.

21 Then underneath that, the \$294,000 -- there you go --  
22 the \$294,000 is what Mr. Nurick received from Tinoco for his  
23 sale of the two-thirds interest that he had in this Genesis Fund  
24 investment.

25 Q. Did Mr. Nurick ever tell you how much he sold his interest

1 in Genesis to Mr. Tinoco for?

2 A. Yes.

3 Q. How much?

4 A. For 300,000, but I was only able to trace 294,000. So  
5 Nurick received from Genesis 579. He received from Tinoco for  
6 the sale -- it was through the Luna account -- 294,000 so the  
7 total that Mr. Nurick received for this investment was 5 -- from  
8 Genesis was \$873,838.55, which is the total of these two  
9 components, monies that he got from Genesis, monies that he got  
10 from Tinoco.

11 Then this next total down here, this next section is  
12 the total of the Genesis payments to Andre Tinoco, and that  
13 began in 1999, and we didn't have all of those accounts either,  
14 all of those records, but it looks like Tinoco received  
15 540,171.22. So the total that Genesis paid out to Nurick and to  
16 Tinoco, who I believe is an unrelated entity, was \$1,363,000.

17 Now, if we go to Mr. Nurick's tax returns, which now  
18 you need to lift it up a little, this chart -- yes. Okay. So  
19 if you look at what was reported on Schedule -- on Schedule D,  
20 there was \$602,000 reported right here on Schedule D, and then  
21 on Schedule E there was \$116,000, and then miscellaneous income,  
22 there was \$11,000, so the total that was reported by Mr. Nurick  
23 as having received from this investment in Genesis was \$731,000.

24 Q. Does that mean he would have paid taxes on that investment?

25 A. Yes.

1 Q. On \$731,000?

2 A. Yes.

3 Now, if you -- if you add up -- if you go back up to  
4 my little squiggly A up here, which is a footnote reference, the  
5 \$873,000, if you subtract out what's called basis -- you know,  
6 like if somebody buys stock. If you bought stock in a company  
7 for \$100 and you sold it for \$150 on your tax return, you would  
8 report a sale of 150, and your basis or your cost would be \$100  
9 so there would be a gain or taxable would be the \$50. And  
10 that's what Mr. Nurick did here. He received \$873,000, and then  
11 his basis from the retirement accounts -- we heard about the IRA  
12 rollover accounts that was \$349,750, so that's his basis because  
13 that was his money from the retirement account that got rolled  
14 into Genesis plus in 1994 when he became part of this formation  
15 group called The Human Element, he invested, along with these  
16 other guys that founded it -- he invested \$10,000. So he should  
17 get credit for that. So the amount of gain -- I'm sorry. The  
18 amount of his basis should have been 359,000. Okay. It's the  
19 money that he invested through these rollover accounts plus the  
20 10,000.

21 So the gain on the sale of this Genesis investment,  
22 you would subtract out from the \$873,000 over here -- you would  
23 subtract out the \$359,000 of basis, and his gain would be -- the  
24 reportable gain would be \$524,000.

25 Now, if you go back up to this number here and you

1 look at what he reported over the years on his tax return, he  
2 actually reported gains of \$731,000. So for purposes of my  
3 chart, I caption this that he over-reported, but I'm not  
4 representing that he over-reported. I just don't have all the  
5 information. What I'm saying is the gain he had was \$524,000.  
6 He reported \$731,000. So as far as I'm concerned, from what I  
7 could see, he reported all of his Genesis-related income.

8 Q. Let me direct your attention -- let me erase these  
9 squiggles. Let me go up to the top of the chart. Before I do  
10 that, let me go to the second page.

11 What is this -- did you prepare this?

12 A. I did.

13 Q. What is this?

14 A. Well, this shows the amount of the tax on the original tax  
15 returns, then the additional tax as a result of the amended  
16 returns that were filed that were prepared by Tony Lam, and then  
17 the total amount of tax for each one of the years.

18 Q. Let me go back to the first page.

19 All right. At the very top here, do you see where I  
20 have circled here?

21 A. Yes.

22 Q. In 1995 Mr. Nurick rolled his retirement account over into  
23 Genesis. Why doesn't that number, what he rolled over, show up  
24 in that column?

25 A. Well, again -- this schedule is for monies that were

1 received by the Nurick-related entities from Genesis. It has  
2 nothing to do with what he invested. It has nothing to do with  
3 the basis. That's a different -- it's a different issue.

4 Q. So the \$78,000 is -- would it be fair to say that  
5 represents the income from the investment of his rollover?

6 A. Right. That's the amount that Genesis paid to this  
7 I-Control NB Account Trust which, as I understand it, was set up  
8 by Jay Lashlee as the rollover account for the investment in  
9 Genesis. So the IRA money went from Fidelity and Charles  
10 Schwab, and Lashlee had Mr. Nurick sign a form requesting  
11 disbursement of the funds, and then it was -- this account was  
12 set up and that was like the transition account for Lashlee when  
13 he got the money and invested it in Genesis. So this is like  
14 the new IRA rollover account, this I-Control NB Account Trust.

15 Q. So this would not -- if it was a rollover account, then  
16 this would not be taxable; is that correct?

17 A. That's correct. If you look at the bottom of this  
18 schedule, right down in here, you could see that he didn't  
19 report any income for '95, '96 -- I'm sorry. '95, '6 -- well,  
20 '7, there is nothing. 1998. So for those three years, there  
21 was no income reported.

22 Q. Are you referring to right here?

23 A. Yes. Right in there. There was no income -- there was no  
24 income reported for those years, and those were the years  
25 that -- from the -- from my discussions and from what I could

1 see, it was Mr. Nurick's belief that this was money that was  
2 being paid into his retirement account by Genesis, which is  
3 reflected up on top, which would not be taxable and would not be  
4 reportable on a tax return.

5 Q. Now, you said you interviewed Mr. Lashlee. What did you --  
6 tell the jurors, based on your interview with Mr. Lashlee, what  
7 did you discover regarding the rollover accounts that he had  
8 created for Mr. Nurick?

9 A. Well, Mr. Lashlee -- actually, he was -- he had this  
10 company called Professional Trust Services down in Laguna, and  
11 he actually had an office at a Wells Fargo branch down in Laguna  
12 Niguel, and people were being referred to him to set up these  
13 trust accounts, so he was setting up these IRA rollover  
14 accounts, and he was setting up trust accounts by the pound, and  
15 his theory was that, as he expounded to me -- was that --

16 MS. HENDRICKSON: Objection, your Honor.

17 THE COURT: Sustained.

18 BY MR. LOMBARD:

19 Q. Well, what's your opinion, based on Mr. Lashlee's theory,  
20 as to why -- what's your opinion, having talked with Mr. Lashlee  
21 and looked at the records and looked at the rollovers regarding  
22 the retirement accounts that he set up on behalf of Mr. Nurick?

23 MS. HENDRICKSON: Objection. Lack of foundation.

24 THE COURT: Sustained.

25 BY MR. LOMBARD:

1 Q. You spoke with Mr. Lashlee?

2 A. I did.

3 Q. Based on your conversation with Mr. Lashlee -- well, did  
4 you review documents in this case?

5 A. I did.

6 Q. Did you review the 1099-Rs in this case?

7 A. Yes.

8 Q. What is a 1099-R?

9 A. A 1099-R is a tax form that is issued by a disbursing  
10 company from a retirement account, and it's the form that, in  
11 this specific case, Fidelity Investments issued to Mr. Nurick  
12 showing a gross amount of distributions from his IRA account and  
13 then designating that the taxable amount of the distribution was  
14 zero.

15 Q. Based on the documents you looked at, the 1099-R, and the  
16 discussions with Mr. Nurick and Mr. Lashlee, what's your opinion  
17 as to the rollover that Mr. Lashlee created?

18 A. I -- I saw nothing in the -- in the evidence that indicated  
19 that the IRS disallowed the rollover or these IRA rollover  
20 accounts that Lashlee set up. So in my mind, there may not have  
21 been any reason to amend the tax returns to report that the  
22 rollover was actually taxable because I never saw any kind of a  
23 determination letter, audit or anything with respect to Lashlee  
24 or specifically with respect to Mr. Nurick saying that it was an  
25 improper rollover of the IRA account.



1 Q. What are the kind of documents that you see or review when  
2 you -- first of all, are you aware of how the IRS notifies a  
3 person whether or not they are a proper IRS custodian for a  
4 rollover?

5 A. You know, I've researched that, and I'm not aware of a list  
6 that says that these are proper custodians of accounts. It may  
7 be out there, but I extensively looked at the IRS website trying  
8 to determine if in fact Lashlee or anybody else would be, you  
9 know, an authorized or proper custodial person for these  
10 accounts, and I haven't been able to find anything.

11 Q. Well, Denise Taylor-Fraser -- do you recall her testimony?

12 A. Yes.

13 Q. She mentioned something about whether or not you exercised  
14 control over it. Do you recall that part? Whether or not it's  
15 a valid rollover or not?

16 A. I remember she said something about that, and she wrote a  
17 memo regarding that.

18 Q. I'm showing you what's been admitted as Government's  
19 Exhibit 356, the first page of it. Do you recall this exhibit?

20 A. Yes, I do.

21 Q. And what is that?

22 A. It's like a tax opinion letter about the taxability of  
23 Genesis Fund distributions.

24 Q. And this is the one that Ms. Taylor-Fraser indicated that  
25 she co-authored; right?

1 A. Yes.

2 Q. Did you review this document?

3 A. I did.

4 Q. What's your opinion of this document?

5 A. It's a great document. It says that distributions from  
6 Genesis are taxable, but it doesn't address the fact that if  
7 somebody owns their interest in Genesis through a retirement  
8 account, it wouldn't be taxable because just like anybody here  
9 who has a retirement account and there is gains or losses or  
10 whatever transactions are in that retirement account, those  
11 transactions are simply contained within the retirement account  
12 and they're not something that goes on a tax return. They're  
13 not reportable on a tax return.

14 A retirement account doesn't become taxable to you  
15 until you take it out. You know, the exception is a Roth  
16 retirement account, a Roth IRA, because you don't get the  
17 deduction on your tax return when you fund it and it's not  
18 taxable when you receive it, but on typical IRA's -- and I don't  
19 know what the ratio is now with the Roth to the traditional, but  
20 on a traditional IRA account, you make a contribution, you get a  
21 deduction on your tax return, and then once you start taking  
22 money out of your retirement account, that's when it becomes  
23 taxable.

24 So she's not addressing that in her -- this opinion  
25 letter or memo or whatever you want to call it, and so I don't

1 think it's applicable in this situation.

2 Q. The government showed, throughout this trial, a number of  
3 checks and bank accounts to the witnesses. Are those the same  
4 checks and bank accounts and withdrawals that you relied on in  
5 preparing your spreadsheet?

6 A. Well, I have a book of all of these which is -- it's -- I  
7 think it's a little more extensive than what the government had,  
8 but our numbers are very similar. I mean, there is no material  
9 discrepancy in the numbers. I think theirs are a little lower,  
10 mine are a little higher, but they're basically the same  
11 numbers.

12 Q. Let me show you what has been admitted as Government  
13 Exhibit 400. Is your analysis any different -- first of all,  
14 what is Exhibit 400?

15 A. This is a chart from Ms. Pugh of the Genesis funds that  
16 were -- that were deposited to this I-Control NB Trust for 1995,  
17 and it shows a total of \$24,980.53 as being received by this  
18 I-Control account.

19 Q. Are your numbers any different?

20 A. I'm showing -- I'm showing a total of \$78,362, so I'm  
21 basically showing \$54,000 more than the government's chart.

22 Q. I'm showing you what's been admitted as Government  
23 Exhibit 401. Do you recognize this?

24 A. Yes.

25 Q. What is this?

1 A. This again is a deposit from Genesis to this I-Control  
2 account for 1996, which shows \$3,584 having been received.

3 Q. This is reflected in your schedule?

4 A. I reflect \$32,000 as having been received. \$32,856.

5 Q. I'm showing what has been admitted as Government  
6 Exhibit 402. What is this?

7 A. This again is deposits from -- or Genesis deposits  
8 deposited to the I-Control account for 1998 showing \$137,854.

9 Q. Is your schedule any different from this?

10 A. I'm showing 150,987 having been deposited to the I-Control  
11 account.

12 Q. I'm showing you what has been admitted as Government  
13 Exhibit 403. What is this?

14 A. Again, this is the same chart showing deposits to various  
15 accounts. However, it's kind of a salad bowl here because it's  
16 mixing up all of the accounts. I isolated the accounts and  
17 segregated the deposits. This is showing a total of, I think  
18 it's \$266,880, but it also includes deposits to Luna de Los  
19 Crestones, which the government -- the government's position is  
20 belongs to Mr. Nurick and my position is that it does not.

21 So for 1999, I'm showing 41,000 to the I-Control  
22 account and 123 to NG Enterprises, so this is NG over here,  
23 here, and here, and then down on the bottom, but I'm not  
24 showing -- I'm showing the payments to Luna de Los Crestones,  
25 but I'm showing it as -- on the third section of my chart as

1 going to Tinoco.

2 Q. I'm showing you what has been admitted as Government  
3 Exhibit 404. Do you recognize this chart?

4 A. Yes.

5 Q. What is this?

6 A. Same thing. It's payments from Genesis to the various  
7 entities, and again, you know, they have the Luna account in  
8 here, the 63,000, and I think -- I'm showing the 63,000 on my  
9 chart as going to -- to Tinoco, and I'm showing these other  
10 payments as going to either the I-Control or payments from  
11 Tinoco to Mr. Nurick.

12 Q. And what's been admitted as Exhibit 405 I'm now showing  
13 you. What is this?

14 A. Well, again, same thing for 2001. It's payments to Eleanor  
15 Grochowski to Aztec and then to these Luna accounts. The total  
16 being \$230,000 for 2001, and I'm showing a total of 320 -- I'm  
17 sorry -- \$351,000 as being paid, but of that, \$327,000 went to  
18 Luna and I do not believe are reportable by Mr. Nurick.

19 Q. I'm showing you what's been admitted as Government  
20 Exhibit 406. What is this?

21 A. 406, that's -- okay. That's again Genesis to -- this is to  
22 Tax Law Services, Inc., for 2002, and it's \$127,000, which I'm  
23 showing in the top section of my chart as TaxLawServices.com,  
24 Inc., in trust for Aztec. That went into the Bank of America  
25 account that Lyly Nguyen was the signer on.

1 Q. What did you learn through -- as the source of the income  
2 or the money, I should say, from Tax Law Services?

3 A. Well --

4 Q. In the -- ITF, Aztec Trust, I should say?

5 A. Okay. The Aztec Trust was -- was Mr. Nurick's vehicle for  
6 holding his one-third remainder interest after he sold  
7 two-thirds interest to Tinoco, so the money that came into this  
8 Aztec Trust, when Lyly Nguyen had it and after -- or before  
9 that, I'm sorry, was income from Genesis that was distributed  
10 out because that was his interest in Genesis as opposed to the  
11 other two-thirds that was Tinoco's interest in Genesis.

12 Q. Who was the trustee for Aztec before Lyly Nguyen?

13 A. There was a lawyer down in Laguna Beach by the name of  
14 Kevin Mirecki who, as I understand, established the trust  
15 instrument and was the trustee of the Aztec Irrevocable Trust.

16 MR. LOMBARD: Court's indulgence.

17 THE COURT: Sure.

18 BY MR. LOMBARD:

19 Q. I'm showing you what has been admitted as Government's  
20 Exhibit 407. What is this?

21 A. This is a summary of the amount of funds that were  
22 disbursed by Genesis -- well, it says received by William  
23 Nurick, but it also includes the monies that were sent to Luna  
24 de Los Crestones or to Tinoco, so this total of \$1,095,000 when  
25 compared to my schedule, which would be all of the disbursements

1 that we've accounted for, I am showing \$1,360,000. But of the  
2 amount that I'm showing, \$540,000 should be attributable to  
3 Tinoco through this Luna de Los Crestones. So this chart is a  
4 total, but I don't believe it's correct.

5 Q. I'm showing you what has been marked and admitted as  
6 Government Exhibit 408. What is this?

7 A. These are the -- the amounts received per year, and again  
8 that's the \$1,095,000 that we looked at previously, and the  
9 amount that Mr. Nurick reported of \$742,000, and I'm showing  
10 that he reported \$731,000. I'm not showing the \$742,000, but  
11 again the \$1,095,000 includes the disbursements to the Tinoco  
12 entity which I don't believe should have been designated as  
13 having been received by William Nurick.

14 Q. I'm showing you what has been marked and admitted as  
15 Government Exhibit 409. What does this chart show?

16 A. This chart is showing the balances in the various accounts  
17 that Mr. Nurick had at the time that this Offer in Compromise  
18 was submitted and the Form 433, that individual financial  
19 statement form for the IRS, was prepared, so it's showing the  
20 balances in each account.

21 Q. Now, when the Offer in Compromise was filed, what's your  
22 understanding as to what Mr. Nurick's assets were at that time  
23 based on this chart?

24 A. Okay.

25 Q. Or based on your understanding using this chart?

1 A. Okay. My understanding is that he had this Clovis account  
2 for the \$5,400. My understanding is also that he had this Wells  
3 Fargo account for the \$7,500. The Aztec account, that was an  
4 account that I believe Ms. Nguyen testified she was aware of but  
5 didn't think it was reportable because of this nebulous control  
6 issue that she said Mr. Nurick was confused about, so that  
7 wasn't reflected on the 433-A, and I'm not -- you know, I'm not  
8 sure why she didn't report it, but she didn't.

9 This Ansbacher account, this NG Enterprises, those  
10 funds were disbursed out to Mr. Biber before this financial  
11 statement was prepared, so that was no longer in Nurick's  
12 account, and then again this Luna de Los Crestones account at  
13 Banco Interfin, I believe that that was not Mr. Nurick's money.  
14 It was not his account. He was never a signer on the account.  
15 And as far as I know, the only signer was Tinoco, and Mr. Nurick  
16 had a credit card or something related to that account, but it  
17 wasn't his.

18 Q. So what would be the funds available to pay the IRS on  
19 April 19, 2001, based on your understanding of this chart?

20 A. Well, it would be these -- these two numbers. It would be  
21 approximately \$13,000.

22 Q. Let's talk about how to pay -- well, let me start with  
23 amending the returns. So you've said that you -- from your  
24 understanding, there's a question as to whether or not the  
25 return of 1995 ever had to be amended; right?



1 A. Yes.

2 Q. And why is that?

3 A. Well, for two reasons. I believe that there was a question  
4 at the time as to whether or not that IRA rollover was valid or  
5 not, and just based on that issue alone, I think there's a  
6 question about whether the return should have been amended. And  
7 secondly, the statute of limitations already ran on that 1995  
8 year, so he had -- again, there's no duty to amend a tax return,  
9 but beyond that, the statute had expired on that year. So I  
10 would have not recommended to Mr. Nurick that he file an amended  
11 return on a year that was -- that was closed by statute.

12 Q. So we know in this case -- who suggested that Mr. Nurick  
13 amend his returns or advised Mr. Nurick to amend his returns?

14 A. My understanding is that Lyly Nguyen made that  
15 recommendation.

16 Q. And by doing -- by amending his '95 returns, what occurred  
17 as a result?

18 A. Well, here we are. What occurred as a result was that he  
19 filed an amended return, a 1040-X, which generated a tax  
20 liability of \$106,000, based on the tax on the \$270,000 of  
21 distributions, and another 56,000 or 53,000, something like  
22 that, of penalties for the late payment of the return.

23 Q. How is interest and penalties calculated for a tax  
24 liability when it's incurred?

25 A. Well, penalties are five percent a month on late filings or

1 late payments for a total of five months or 25 percent, and then  
2 there is a half a percent a month thereafter. The interest  
3 is -- changes -- I think it's every six months or every quarter.  
4 The interest rate that the IRS charges and also that the IRS  
5 pays on refunds, that changes, and I don't know what it was back  
6 in '95 to '99 or 2000 when it was filed, but it -- for a long  
7 time it's been six percent, and I think right now they just -- I  
8 just got a notice from the IRS that it was reduced to four  
9 percent. But it varies over the years. I think at one point it  
10 was as high as 14 or 16 percent, years ago.

11 Q. Now, you heard Ms. Nguyen indicate that she advised  
12 Mr. Nurick of three ways to satisfy his tax liability. Do you  
13 recall that?

14 A. Yes.

15 Q. And what were they?

16 A. Well, one way is --

17 MS. HENDRICKSON: Objection, cumulative.

18 THE COURT: Sustained.

19 BY MR. LOMBARD:

20 Q. Well, you heard Ms. Nguyen testify that she advised him to  
21 file an Installment Agreement. Could you tell the jurors what  
22 is an Installment Agreement and how it's determined.

23 A. Okay. An Installment Agreement is an agreement. It's a  
24 form that you submit requesting to pay out your taxes over a  
25 period of time. And it's usually based not -- not usually, but

1 it's always based on your financial situation. So if somebody  
2 incurs a tax liability, whether it's on an original return or an  
3 amended return and they can't pay it right away or they don't  
4 want to pay it right away, they could ask for an Installment  
5 Agreement to pay it out over a period of time. I mean, there's  
6 all these different parameters that are looked at by the IRS.  
7 You know, normally they want it paid off within six months but  
8 sometimes they'll go to 12 months, and then under the  
9 circumstances they may agree to an Installment Agreement with  
10 different payment amounts, you know, stepped up. The IRS always  
11 has a right to reevaluate the Installment Agreement based on  
12 your current financial situation, but there is --

13 MS. HENDRICKSON: I am going to object to the  
14 narrative answer.

15 THE COURT: I think we are going far afield of  
16 anything relevant to this case, Mr. Lombard.

17 BY MR. LOMBARD:

18 Q. How does the IRS determine whether or not the Installment  
19 Agreement -- well, in this case, you know Mr. Nurick signed an  
20 Installment Agreement. Did you review that document?

21 A. Yes, I did.

22 Q. And what was the amount he listed as a monthly payment to  
23 satisfy the installment request?

24 A. \$500 a month.

25 Q. How does the IRS determine whether or not that amount -- or

1 how they would, based on your experience, determine whether that  
2 amount is an appropriate amount to pay over time?

3 A. The determination is based on the same documents that was  
4 submitted with the Offer in Compromise, but I didn't see it as  
5 part of the Installment Agreement in Ms. Nguyen's files. It's  
6 the 433-A and the 433-B. So the taxpayer has to fill out their  
7 available assets, liabilities, their monthly income, and then  
8 monthly expenses within certain parameters, like housing and  
9 living expenses. There are parameters for it. It's not just  
10 what you're paying. It's what -- what will be allowed. It's  
11 called the national standards.

12 So that 433-A and B, if you have your own business, is  
13 supposed to be submitted with the form -- with the request -- a  
14 9542, whatever the form is, requesting the right to make an  
15 Installment Agreement.

16 Q. In this case there was a Power of Attorney that was signed  
17 by Mr. Nurick. Do you know, based on your experience, whether  
18 or not a Power of Attorney signature would allow a taxpayer's  
19 representative to file an Installment Agreement?

20 MS. HENDRICKSON: Objection. Speculation.

21 MR. LOMBARD: I can lay a foundation.

22 THE COURT: All right. Thank you.

23 BY MR. LOMBARD:

24 Q. Mr. Laffer, have you filed an Installment Agreement request  
25 before?

1 A. For clients, yes.

2 Q. How many have you filed?

3 A. 100, 200, I don't know.

4 Q. How about Offer in Compromise, have you ever filed an Offer  
5 in Compromise on behalf of a client?

6 A. Yes.

7 Q. How many?

8 A. Maybe two dozen, 18 to two dozen over the years.

9 Q. And in filing the Installment Agreement request and the  
10 Offer in Compromise requests on behalf of your clients, have you  
11 done so on behalf of a Power of Attorney?

12 A. Well --

13 THE COURT: Rephrase that question.

14 BY MR. LOMBARD:

15 Q. Have you ever exercised -- have you ever filed an Offer in  
16 Compromise with the authority given to you through a Power of  
17 Attorney?

18 A. Yes.

19 Q. Have you ever filed an Installment Agreement request  
20 through a Power of Attorney given to you by a client?

21 A. Yes.

22 Q. How many times?

23 A. Well, again, you know, every -- whenever you represent a  
24 taxpayer before the IRS, you must file a Power of Attorney, the  
25 Form 2848. And it has to be specific for the type of tax and

1 the years that you're representing the taxpayer for.

2 Without that, the IRS won't acknowledge the existence  
3 of a taxpayer. So whenever there's an Offer in Compromise or an  
4 Installment Agreement request or anything, with a third party  
5 like me dealing with the IRS on behalf of a client or a  
6 taxpayer, you have to have the Power of Attorney or they won't  
7 talk to you.

8 Q. Describe to the jury what the process is when a taxpayer  
9 representative files an Offer in Compromise with the IRS.

10 A. The process is -- the normal procedure is to file the Power  
11 of Attorney. The IRS has what they call the Centralized  
12 Authorization File Unit, which is at the Ogden service center.  
13 So all powers of attorney reside within the CAF unit, and once  
14 filed, then the IRS from -- wherever it is, you know, various  
15 offices, revenue offices, revenue agents, they could access the  
16 information on that CAF unit to show that an individual is  
17 empowered or authorized to represent the taxpayer for the  
18 particular years and type of tax.

19 So the normal process is to file the Power of Attorney  
20 first, get it recorded, and then the Offer in Compromise would  
21 be submitted either to a revenue officer who is involved in the  
22 case or to the service center. Right now the procedure is that  
23 all offer in compromises --

24 MS. HENDRICKSON: Objection.

25 THE COURT: Right now is not relevant.

1 THE WITNESS: Okay. Well, I'm not --

2 THE COURT: Don't argue with me, sir.

3 Mr. Lombard, would you ask another question.

4 BY MR. LOMBARD:

5 Q. Mr. Laffer, in reviewing the evidence in this case and  
6 based on your experience of having filed Installment Agreement  
7 requests in the past and working as a revenue agent, is this the  
8 kind of case that installment requests would be appropriate for?

9 MS. HENDRICKSON: Objection. Speculation.

10 THE COURT: Overruled.

11 THE WITNESS: So now we are switching to Installment  
12 Agreement.

13 So from the testimony, Mr. Nurick said that he was  
14 making approximately three percent a month on his investment in  
15 Genesis. And I know that approximately, say, one percent, a  
16 half a percent penalty and a half a percent interest or maybe a  
17 little more than that on the interest factor because it's a  
18 variable, but if he's paying, say, one, one and a half percent  
19 for the tax liability but he's receiving three percent back on  
20 this investment, then from a financial standpoint, it makes  
21 sense to do an Installment Agreement request so that you could  
22 keep as much of the corpus or the principal together in your  
23 investment. That would be -- that would be my analysis on  
24 behalf of the taxpayer or on behalf of my client.

25 BY MR. LOMBARD:

1 Q. Let me turn your attention to the Offer in Compromise.  
2 Based on your experience of having filed -- requested Offer in  
3 Compromises and being a revenue agent, would you suggest or  
4 advise that a taxpayer use an Offer in Compromise in this  
5 situation?

6 A. No. But I was never a revenue agent. I was a special  
7 agent. I was in the criminal division. But as a practitioner,  
8 I deal with revenue officers on Offer in Compromises and  
9 Installment Agreements. But I don't believe that Mr. Nurick was  
10 a candidate for an Offer in Compromise.

11 Q. And why is that?

12 MS. HENDRICKSON: Objection. Relevance.

13 THE COURT: Overruled.

14 THE WITNESS: Well, he had this Genesis, you know --  
15 this investment in Genesis, you know, vis-a-vis the I-Control NB  
16 Trust and this Aztec, and he had sufficient money in there to  
17 where he would not have qualified to do an Offer in Compromise  
18 because an Offer in Compromise is where the revenue officer or  
19 the officer specialist with the collection division of IRS  
20 evaluates whether or not it's in the best interest of the  
21 government to take some amount less than what's owed, and the  
22 evaluation is based on how much can they get from this guy  
23 either by forcing him to liquidate assets or on a monthly  
24 Installment Agreement, and there's a formula that's used.  
25 Basically if they can get an amount per month off of the 433-A



1 on an Installment Agreement, the IRS multiplies that by 48  
2 months and then adds whatever net equity and assets the taxpayer  
3 has, and they compare that to the amount of the tax liability,  
4 and I believe that if Ms. Nguyen had looked at that, she would  
5 have realized that an offer would have never been accepted.

6 MR. LOMBARD: Thank you.

7 No further questions at this time.

8 THE COURT: Ms. Hendrickson?

9 MS. HENDRICKSON: Yes, your Honor.

10 CROSS-EXAMINATION

11 BY MS. HENDRICKSON:

12 Q. Good morning, Mr. Laffer.

13 A. Good morning.

14 Q. I'd like to direct your attention first to the last  
15 statements you were just talking about, the financial statement  
16 that would have been attached to the Offer in Compromise.

17 A. Yes.

18 Q. Isn't it true that if the person does not report most of  
19 their assets to the IRS, then the IRS is going to have a very  
20 false impression of their ability to pay; correct?

21 A. Yes.

22 Q. If we could turn to Defense Exhibit 2, do you recall this  
23 document, Mr. Laffer? Let me show you the bottom part. It's a  
24 signature by Ms. Nguyen.

25 A. Yes.

1 Q. Going back to the top, it's Ms. Nguyen's letterhead dated  
2 June 20, 2000, to Mr. Nurick, and it's regarding his Genesis  
3 investment.

4 A. Yes.

5 Q. And then there is information contained in Section 1 as  
6 direct rollover to Genesis from IRA; correct?

7 A. Yes.

8 Q. And that's the information you were talking about from the  
9 pension plans and the 1099s?

10 A. 1099-Rs, yes.

11 Q. Then the next section is the investment return from  
12 Genesis; correct?

13 A. Yes.

14 Q. And there is an amount listed there for 1997 of \$44,404;  
15 correct?

16 A. Yes.

17 Q. And in your schedules, you had no information and no dollar  
18 amounts for 1997; correct?

19 A. Correct.

20 Q. So Mr. Nurick is providing information to Ms. Nguyen that  
21 is based on some information he has that the government has not  
22 had because it was not introduced at trial; correct?

23 A. Yes.

24 Q. So you know that Mr. Nurick had at least some other money  
25 that -- where some Genesis money was going or some other bank

1 account; correct? That's the only logical conclusion?

2 A. Yes.

3 Q. Then at the bottom here, would you agree that the amount  
4 put in at the beginning should be treated as his basis, and any  
5 money he received after \$279,000 essentially would be treated as  
6 capital gain?

7 A. Yes.

8 Q. That's the \$275,000?

9 A. Yes.

10 Q. If we could bring up Government Exhibit 347. If we could  
11 look at the second page. Zoom in on the interest income and the  
12 investment income.

13 Do you recall Mr. Lam's testimony and Mr. Nurick's  
14 testimony that this was information that was typed up by Mr. Lam  
15 based on what Mr. Nurick had provided to him?

16 A. Yes.

17 Q. And in the investment income, there's long-term investment  
18 return from Genesis listed for 1999 and for 2000; correct?

19 A. Correct.

20 Q. And those amounts are reported as capital gain on his tax  
21 return?

22 A. Correct.

23 Q. The interest income for 1999 is listed as \$115 from Clovis;  
24 is that correct?

25 A. That's what it shows, yes.

1 Q. And in the miscellaneous column for 2000, it's only \$29?

2 A. Yes.

3 Q. You've been here for the entire trial; correct?

4 A. I have.

5 Q. Have you reviewed the exhibits that have been admitted into  
6 evidence?

7 A. I have.

8 Q. And isn't it true that in the Ansbacher bank statements,  
9 the account in the name of NG Enterprises, Ltd., that Mr. Nurick  
10 had over \$4,000 in interest income that was not reported?

11 A. I don't remember the amount, but the interest in Ansbacher  
12 was not reported, yes.

13 Q. All right. And that was Mr. Nurick's company?

14 A. Yes.

15 Q. If we could pull up Exhibit 403, please. Counsel went over  
16 the schedule a little bit with you; correct?

17 A. Yes.

18 Q. And your disagreement with the government's calculations is  
19 that the four Luna de Los Crestones amounts should not be  
20 considered income to Mr. Nurick; is that correct?

21 A. Yes.

22 Q. Because you're saying that Luna de Los Crestones is not his  
23 entity?

24 A. That's my understanding, yes.

25 Q. And could you tell the jury what exhibit you have that

1 shows that Mr. Nurick sold his interest in Genesis?

2 A. Well, I'm aware of some documents. I don't believe that  
3 they're introduced into evidence in this case.

4 Q. Do you have them on the stand with you? Is it something  
5 you reviewed to form your opinion?

6 A. I don't have it on the stand.

7 Q. Do you have it here in the Court?

8 A. Mr. Lombard may have it.

9 MR. LOMBARD: Court's indulgence.

10 THE COURT: Sure.

11 (Counsel confer off the record)

12 BY MS. HENDRICKSON:

13 Q. The source of the account for this money is listed in the  
14 far right; correct?

15 A. Yes.

16 Q. And you do not dispute that the International Centrix  
17 Account Trust was used to distribute Genesis funds; correct?

18 A. Yes.

19 Q. Yes, you agree, or yes, you dispute it?

20 A. Yes, I do not disagree. Sorry. You asked me a double  
21 negative.

22 Q. I'll rephrase next time.

23 All right. So our totals agree, it's just the  
24 characterization of whether it's Mr. Nurick's income or money  
25 that you say was given to Mr. Tinoco; correct?

1 A. Correct.

2 Q. All right. If we could look at the Exhibit 5, page 1. If  
3 we could zoom in first on line 13. And this is the 1999 form  
4 1040 for Mr. Nurick. Do you want us to go out so you can see  
5 the whole exhibit?

6 A. No. I know what it is. That's the capital gain on  
7 Schedule D.

8 Q. If we could turn to page 5 of this exhibit for the Schedule  
9 D, just zooming in there. And here it's listed Genesis  
10 investment date acquired January 1, 1995; correct?

11 A. Yes.

12 Q. It says date sold 12/31/99?

13 A. Yes.

14 Q. Sale price is \$285,688; is that correct?

15 A. It says *sales price*, but that's the amount he received that  
16 year.

17 Q. Yes. And then the next column has no cost or basis;  
18 correct?

19 A. Correct.

20 Q. So all money was taxable as a long-term capital gain?

21 A. Yes.

22 Q. That's also consistent with the testimony of Tony Lam and  
23 Lyly Nguyen; correct?

24 A. Yes.

25 Q. And with the letter that we just reviewed that said he

1 basically had recouped all of his investment in earlier years so  
2 now 1999 and after, it's all going to be taxable income if he  
3 gets Genesis distributions; correct?

4 A. Correct.

5 Q. If we could pull up Exhibit 404, please. Now, on this  
6 chart for 2000, there's \$303,000 total that is attributed to  
7 Mr. Nurick. Do you agree with that?

8 A. Yes. Well --

9 Q. Your only disagreement is with one of the line items;  
10 correct?

11 A. Right.

12 Q. For December 13 of 2000, the \$63,000 payment that came from  
13 Harrow Management and went into Luna de Los Crestones at Banco  
14 Interfin; correct?

15 A. Yes.

16 Q. Your testimony is that that is money that went to  
17 Mr. Tinoco, not to Mr. Nurick?

18 A. Yes.

19 Q. All right. If we could look at Exhibit 6, page 1 of the  
20 tax return, now the amount here is -- that's reported by  
21 Mr. Nurick on his individual tax return for 2000 is \$317,114;  
22 correct?

23 A. Yes.

24 Q. And you would agree that the government could only trace  
25 \$303,000 to him; correct?

1 A. Well --

2 Q. Based on that prior chart?

3 A. To him and to Tinoco, yes.

4 Q. And let's go back to the chart, 404. So Mr. Nurick told  
5 the IRS, *I had over \$300,000 of capital gains for 2000*; correct?

6 A. Yes.

7 Q. And if we take out the amount that you're saying should not  
8 be attributed to him, then we would be at an amount of about  
9 \$240,000; correct?

10 A. That's correct.

11 Q. So Mr. Nurick would be admitting he got money in some other  
12 account that was a Genesis distribution that was taxable to him,  
13 just not this one?

14 A. Well, we can't account for it because the records are  
15 incomplete, but, yes, I mean, he's saying that he got \$317,000.  
16 You're showing 303 and I'm showing 273.

17 Q. So you would agree that even including the Luna de Los  
18 Crestones amount, the government still didn't come up to what  
19 Mr. Nurick reported; correct?

20 A. Yes. Correct.

21 Q. If you take that money out, then that means there is some  
22 other account out there where Mr. Nurick has admitted to  
23 receiving Genesis distributions that the government could not  
24 find?

25 A. Yes.



1 THE COURT: Ms. Hendrickson, is this a good time for a  
2 break?

3 MS. HENDRICKSON: Yes, your Honor.

4 THE COURT: Ladies and gentlemen, don't talk about the  
5 case or form or express any opinions about the case until it's  
6 finally submitted to you. We will take a 15-minute break.

7 (Recess taken)

8 (Jury In)

9 THE COURT: Everyone is present. The witness is back  
10 on the stand.

11 Sir, you are still under oath.

12 Ms. Hendrickson, you may continue.

13 MS. HENDRICKSON: Thank you, your Honor.

14 Q. Could we pull up Exhibit 316, please.

15 Mr. Laffer, this is a copy of a document where  
16 Mr. Nurick -- do you see his signature at the bottom?

17 A. Yes.

18 Q. And he's signed as trustee for NG Enterprises; correct?

19 A. Yes.

20 Q. Is requesting that \$60,000 be transferred from the account  
21 of NG Enterprises at Ansbacher Jersey and transferred to an  
22 account in the name of Luna de Los Crestones at Banco Interfin;  
23 correct?

24 A. Yes.

25 Q. And wouldn't you agree that if somebody was transferring

1 money to a bank account, especially \$60,000, that that would be  
2 an account they would control?

3 A. I wouldn't -- I wouldn't conclude that at all.

4 Q. Let's go to the next exhibit, 157, page 2. And in fact the  
5 bank statement that's in evidence for NG Enterprises, Ltd.,  
6 reflects a transfer of \$60,000 on May 18, 1999; correct?

7 A. Yes.

8 Q. How many years did you work as a special agent?

9 A. I was a special agent and group manager for nine years.

10 Q. And as part of your training in how to prove fraud, would  
11 you agree that one of the best indications of someone's intent  
12 is whether they have control over the money?

13 A. Well, I mean, intent is a nebulous term that could relate  
14 to anything, but when you say *control over the money*, I'm not  
15 sure what you mean.

16 Q. All right. Let me ask you, in your experience as a special  
17 agent and in private practice for the last 20 years, are you  
18 familiar with the term *nominee*?

19 A. Sure.

20 Q. And would you agree that a nominee is someone who owns  
21 something on paper but in fact someone else is actually  
22 controlling what's going on with that account or with that  
23 asset?

24 A. Yes.

25 Q. And one of the ways that you as a special agent, when you

1 were investigating tax fraud, would prove willfulness is through  
2 tracing money and seeing where it went and who controlled the  
3 spending; correct?

4 A. Yes.

5 Q. If we could go to Exhibit 7, page 1. Now, in 2001, if we  
6 could look down at the bottom on line 21, Mr. Nurick reports on  
7 his individual 1040 \$11,646 from Aztec Irrevocable Trust;  
8 correct?

9 A. Yes.

10 Q. You agree that was money that was distributed from Genesis?

11 A. Yes. I believe it went to his wife Eleanor.

12 Q. When you were working as a special agent and now when you  
13 are working in private practice, were you familiar with people  
14 using the state of Nevada to create businesses?

15 A. Yeah. People do that all the time.

16 Q. Well, isn't it true that one of the reasons they use the  
17 state of Nevada is because the state does not require a public  
18 listing of the officers or who controls the company?

19 A. You know what? I'm not aware of that. Most people do it  
20 because they think Nevada is a tax-free state. I don't know if  
21 Nevada reports officers or not. I don't know.

22 Q. Okay. You're not familiar with that?

23 A. No, I'm not.

24 Q. But you are familiar that one of the deeds for Mr. Nurick's  
25 Shaver Lake cabin was in the name of Shaver Lake, Ltd., Property

1 Partnership?

2 A. Yes. I saw that in court.

3 Q. If we could bring up Exhibit 151, page 1. Do you recall  
4 the testimony about this check, which was a payment to Mr. Biber  
5 regarding the second deed of trust that he gave to Mr. Nurick,  
6 the \$140,000?

7 A. Yes. That was the interest payment.

8 Q. And this was paid just one month after the promissory note  
9 in January of 2001; correct?

10 A. Yes.

11 Q. And is it your understanding that if an individual pays  
12 interest, then the individual can deduct the interest on their  
13 1040; correct?

14 A. Yes.

15 Q. If a partnership pays the interest, then the deduction  
16 should be on the partnership return; correct?

17 A. Yes.

18 Q. Did you notice that on Mr. Nurick's tax return, that he  
19 deducted this \$9,800 as a deduction on his personal tax return?

20 A. I don't remember, but I'm not going to disagree with you.

21 Q. Can we pull up Exhibit 405, please. So I think we agreed  
22 that the first item, the \$11,666, that that's what Mr. Nurick  
23 reported as income on his 2001 return; correct?

24 A. Yes. It's the same amount.

25 Q. And all of these amounts from Luna de Los Crestones he

1 received April, May, June, July -- none of those were reported;  
2 correct?

3 A. Correct.

4 Q. And would you agree that Luna de Los Crestones, the Banco  
5 Interfin account ending in 2103, is also the same place where  
6 money Mr. Nurick received from Genesis was deposited in 1999 and  
7 2000? Would you like me to bring up --

8 A. Wait. I'm sorry. Can you say that one more time?

9 Q. Sure. Would you agree that Luna de Los Crestones, this  
10 particular bank account at Banco Interfin, that is listed as the  
11 account receiving funds. Do you see that?

12 A. Yes.

13 Q. Do you recall that that's the same account that also  
14 received funds in 1999 and 2000? We can bring up those  
15 schedules.

16 A. Yes. I'm sorry. I'm looking at my chart. Interfin did  
17 receive funds in '99 and 2000, yes.

18 Q. Let's bring up 403 so the jury can follow along, too.

19 So this is the amount that the government traced to  
20 Mr. Nurick of Genesis funds received, and in fact Mr. Nurick  
21 reported about \$20,000 more on his 1999 income tax return;  
22 correct?

23 A. Yes.

24 Q. And if we can bring up the next exhibit, 404, for 2000.

25 The government traced \$303,000 to Mr. Nurick, but Mr. Nurick

1 reported \$317,000; is that correct?

2 A. Yes. But when you say traced to Mr. Nurick, again I take  
3 exception to the disbursements to Luna for this chart 404 and  
4 403. You said to Nurick. It's to Nurick and to Luna de Los  
5 Crestones.

6 Q. Yes. I understand your distinction.

7 A. Okay.

8 Q. Now, if we can go back to 405, 2000. Now, when you were a  
9 special agent and you were investigating tax fraud, wouldn't one  
10 of the key things you do in analyzing bank accounts is to try to  
11 see some kind of pattern over a period of years?

12 A. Yes.

13 Q. And you would agree, even if you don't agree with the final  
14 characterization, that Mr. Nurick received money from Genesis  
15 that was put into the Luna de Los Crestones account in  
16 Costa Rica in '99, 2000, and 2001; correct?

17 A. Yes.

18 Q. If we could pull up Exhibit 7, page 1. Focusing on line 21  
19 now, for this year, Mr. Nurick only reported the 11,000, and his  
20 total income on line 22 there is \$28,385; correct?

21 A. Yes. Total income, correct.

22 Q. Based on the government's chart, he received over \$230,000;  
23 correct?

24 A. If you include the Luna de Los Crestones receipts,  
25 that's -- yes.

1 Q. Yes. And would you agree -- let me ask you about one  
2 question on your direct testimony. You said that this was  
3 improperly characterized as ordinary income and should have been  
4 capital gain; is that correct?

5 A. Yes.

6 Q. Would you also agree that the tax that was paid on this  
7 \$11,000 at an ordinary tax rate is significantly less than the  
8 capital gain rate would have been if Mr. Nurick reported all of  
9 the money he received, including from Luna de Los Crestones,  
10 which was \$230,000?

11 A. Total tax would have been greater, yes.

12 Q. You made -- you were asked some questions about the statute  
13 of limitations regarding filing of an amended return. Do you  
14 recall that?

15 A. Yes, I do.

16 Q. Now, isn't it true that if the understatement is more than  
17 25 percent, that the statute is then extended to six years?

18 A. Yes.

19 Q. Which would have been within the time frame when  
20 Mr. Nurick's 1995 amended tax return was filed?

21 A. But he didn't underreport his income by 25 percent.

22 Q. Based on the return he filed with the IRS in May of 2000,  
23 he had underreported more than 25 percent of his income, based  
24 on what he filed with the IRS; correct?

25 A. No.

1 Q. In your schedule you also had something about -- if we can  
2 pull it up here. All right.

3 Now, the payments to Tinoco, that's just based on your  
4 understanding of what Mr. Nurick said to you; right? And  
5 testified at trial here before the jury? The fact that money  
6 was paid to Tinoco and not to Mr. Nurick?

7 A. Yes. Well, it went to the Luna account.

8 Q. Yes. But as an expert with all the records that had been  
9 introduced, all the bank accounts, all the other documents we  
10 have seen from Costa Rica and the Bahamas, Asia Pacific, Wing  
11 Hang Bank, there are no documents in evidence before this jury  
12 that show Mr. Nurick sold his interest in Genesis to Mr. Tinoco;  
13 correct?

14 A. Well, if you look at the tax return for the 1999 year, it  
15 shows that he sold his interest in Genesis, 12/31/99. So in  
16 '99 --

17 Q. Sir, let me just ask you the question. Is there a document  
18 in evidence that reflects Mr. Nurick sold his interest in  
19 Genesis? Not what he reported on his tax returns, because I  
20 think it's -- we could draw different conclusions as we have --

21 THE COURT: Just ask a question.

22 MS. HENDRICKSON: All right.

23 Q. Is there a document, a sales agreement, a contract, in  
24 evidence before this jury regarding Mr. Nurick's sale of his  
25 interest in Genesis?



1 A. No.

2 Q. Now, you also mentioned there's an account here for 2001  
3 and 2002 that's regarding Belize. Do you see that?

4 A. Yes.

5 Q. And based on your review of the evidence, Mr. Nurick in  
6 fact opened a bank account at Provident Bank & Trust in Belize;  
7 correct?

8 A. You know what? I don't recall that. I -- I'm not  
9 disagreeing with you, but I don't recall.

10 Q. Well, when you included this on your schedule, you reviewed  
11 some documents regarding this; correct?

12 A. Well, there was an account in the name of Luna de Los  
13 Crestones in Belize.

14 Q. Yes.

15 A. And that's what this 48 -- I'm sorry. This 48 -- this  
16 \$48,425 and the \$47,000 was deposited to the Belize account in  
17 the name of Luna de Los Crestones.

18 Q. And are you aware that Mr. Nurick himself went to Belize to  
19 open that bank account in the name of Luna de Los Crestones?

20 A. I'm not aware of that.

21 Q. If we could bring up Exhibit 100, please. This is a  
22 signature card for I-Control NB Account Trust for account 5757.  
23 Do you see that?

24 A. Yes.

25 Q. And Mr. Nurick is the signer on this account?

1 A. Yes.

2 Q. And in the upper left here, it says it's a checking  
3 account; correct?

4 A. Yes. Yes.

5 Q. And if we could go to page 2. And this part says that it's  
6 an individual account; correct?

7 A. Yes.

8 Q. So there's nothing in the records regarding this bank  
9 account that says it's any kind of trust or retirement account;  
10 correct?

11 A. Correct.

12 Q. If we could pull up Exhibit 352, please. Do you recall  
13 this check being introduced into evidence, a check payable to  
14 Royal Buick drawn on the account of I-Control NB Account Trust?

15 A. Yes.

16 Q. And the check is dated April 19 of 1999 for \$33,949?

17 A. Yes.

18 Q. And this was a check that Mr. Nurick used to buy a 1999 GMC  
19 truck which he titled in the name of Sierra Truck Holding Trust;  
20 is that correct?

21 A. Yes.

22 Q. Would you agree that there is nothing consistent with the  
23 use of this money in the way the car was titled to show  
24 I-Control NB Account Trust as any kind of retirement account?

25 A. Yeah. There's no designation on the check, yes.

1 Q. And buying a car is not a typical investment by a  
2 retirement fund; correct?

3 A. Well, no. I mean, this -- in my opinion, this should have  
4 been taxed to him at the time he took the money out because at  
5 that point, it would have been taxable income.

6 Q. When you were investigating cases when you were still  
7 working for the government -- I want to direct your attention to  
8 one case where you had prepared some tax returns for a person  
9 named -- and you can please correct the pronunciation for me,  
10 but it's spelled S-C-H-O-C-H. Schoch? Do you remember that?

11 A. Oh, Eric Schoch.

12 Q. Yes.

13 A. That was like 25 years ago.

14 Q. I believe it was 1987 and 1986, you prepared amended tax  
15 returns for Mr. Schoch regarding some sales of coins that he had  
16 over a period of time; is that correct?

17 A. Platinum coins.

18 Q. And the records that you had prepared and the tax returns  
19 you prepared showed that he had -- after you took away the  
20 basis, his gain was only \$72,000, approximately? I don't know  
21 if you remember exactly. The total sales was around  
22 1.9 million, the basis was around 1.8 million, and so the gain  
23 was relatively modest at 72,000.

24 MR. LOMBARD: Object to relevance.

25 THE COURT: Ms. Hendrickson, is there some relevance

1 to this?

2 MS. HENDRICKSON: Yes.

3 Q. In deciding the basis in this case and how you accounted  
4 for Genesis, if Luna de Los Crestones is Mr. Nurick's account  
5 and he has full control over that, then you would agree any  
6 money he receives 2000, 2001, 2002, would be fully taxable to  
7 him; correct?

8 A. Yes.

9 Q. And would you agree that when people create offshore bank  
10 accounts, that in your experience as a special agent and in  
11 private practice, that one of the reasons they do that is it's  
12 harder for the government to get records of the money that they  
13 put in and put out; correct?

14 A. Well, I think today there's no question that Swiss bank  
15 accounts or any foreign bank accounts are fair game for the --  
16 for the U.S. government. There's free exchange of account  
17 information.

18 Q. But back in 2000 and 2001, that was not the case, was it?

19 A. Well -- but there were other reasons for setting up  
20 accounts.

21 Q. I'm just asking if that was one reason, based on your  
22 experience?

23 A. Could have been, yes.

24 MS. HENDRICKSON: Brief moment, your Honor?

25 THE COURT: Yes.

1 (Government counsel confer off the record)

2 MS. HENDRICKSON: No further questions, your Honor.

3 THE COURT: Mr. Lombard?

4 MR. LOMBARD: Briefly, your Honor.

5 REDIRECT EXAMINATION

6 BY MR. LOMBARD:

7 Q. Mr. Laffer, could you explain what are the other reasons an  
8 individual would open accounts offshore?

9 A. A lot of times people use -- or still use offshore accounts  
10 for asset protection. For example, if somebody is in a position  
11 where creditors can go after them or if there is judgments  
12 rendered against them, it's more difficult -- I don't know if  
13 it's impossible, but more difficult for judgments to be executed  
14 on foreign accounts.

15 Q. Now, you were asked a question on direct regarding money  
16 being sent, a request to be sent by Mr. Nurick to Luna de Los  
17 Crestones, and the government counsel asked you would you say  
18 that that's his account because money was sent to the account at  
19 Luna de Los Crestones. And you answered no. Do you recall that  
20 question and answer?

21 A. I do.

22 Q. Why would you say no, that person doesn't necessarily own  
23 the account?

24 A. Well, I've been involved in international transactions  
25 where I wire transferred funds to a foreign account, and that

1 didn't mean that I owned that account. I was buying something,  
2 and in this specific case, my understanding is that Mr. Nurick  
3 had a credit card from Luna de Los Crestones, and, again, I  
4 understand from talking to Mr. Nurick that that 60,000 was used  
5 to reimburse Luna from some charges that were on the credit card  
6 so that's why I answered it that way.

7 Q. You were asked a question about the state of Nevada and  
8 your experience with individuals who opened accounts in the  
9 state or corporations in the state of Nevada. What's your  
10 experience with people who you have worked for and reviewed  
11 their corporate documents regarding why they opened a  
12 corporation in the state of Nevada?

13 MS. HENDRICKSON: Objection. Relevance.

14 THE COURT: I'll allow a brief answer, if it's not too  
15 long.

16 THE WITNESS: Most people know that or believe that  
17 Nevada corporations are not subject to tax, and so they open up  
18 Nevada corporations, but if the business is in California, then  
19 it's -- then all of the income is taxable in California, and  
20 there is no benefit to a Nevada corporation.

21 BY MR. LOMBARD:

22 Q. You were asked a follow-up question to that regarding  
23 Shaver Lake Limited Partnership?

24 A. Yes.

25 Q. Do you know who set up -- based on your review of the

1 documents and listening to the testimony, do you know who set up  
2 the Shaver Lake Limited Partnership?

3 A. My understanding is it was Lashlee.

4 Q. And you were asked some questions about your experience as  
5 a tax fraud examiner regarding tracing accounts and the pattern  
6 of money that was -- the way the money flowed in this case.

7 Based on your experience and your review of the documents as a  
8 tax fraud examiner, do you see any evidence that would lead you  
9 to believe that there is fraud in this case?

10 A. No. I -- it's -- I mean, are you talking about the 433-A  
11 and -- and all of the banking transactions? The answer is no.

12 MR. LOMBARD: Thank you. No further questions.

13 THE COURT: Ms. Hendrickson.

14 MS. HENDRICKSON: Briefly, your Honor.

15 RECROSS-EXAMINATION

16 BY MS. HENDRICKSON:

17 Q. If we could pull up Exhibit 188. This is a document  
18 drafted December of 1999. If we could show that date first so  
19 he could see that. The upper right.

20 A. Yes.

21 Q. This is a document that has been translated into English  
22 and is on Andres Tinoco's letterhead and is dated December 20,  
23 1999; is that correct?

24 A. Yes.

25 Q. It's to a Mr. Antonio Ramirez at Banco Interfin?

1 A. Yes. That's what it says.

2 Q. If we could go down to the specifics, there is a request  
3 being made for two transfers. The first one is \$2,000 to the  
4 credit of the account Flowers, Cabinet & Fixtures for \$2,000; is  
5 that correct?

6 A. Yes.

7 Q. Do you recall Mr. Nurick's testimony that Flowers, Cabinets  
8 & Fixtures made tables and cabinets for his cabin in Fresno,  
9 California?

10 A. Yes.

11 Q. So you would agree that he's directing how this money gets  
12 spent; correct?

13 A. Well, Mr. Tinoco is directing the disbursement. I'm  
14 assuming that it was Mr. Nurick's request to Mr. Tinoco to  
15 disburse the funds there.

16 Q. Well, based on where the money went and Mr. Nurick's  
17 testimony, that's the only logical conclusion; correct? That he  
18 asked Mr. Tinoco to send him this money?

19 A. Yes.

20 Q. And the second amount is \$10,500, and it gets sent to the  
21 Nurick Associates bank account at Wells Fargo, and that's also a  
22 bank account that Mr. Nurick controls; correct?

23 A. Yes.

24 MS. HENDRICKSON: No further questions.

25 THE COURT: Mr. Lombard?



1 MR. LOMBARD: Just one.

2 REDIRECT EXAMINATION

3 BY MR. LOMBARD:

4 Q. Mr. Laffer, do you know whose decision it was to send money  
5 to Cabinet Fixtures from Luna de Los Crestones?

6 A. I assume it was Mr. Nurick's request to Tinoco to send the  
7 money.

8 Q. Whose decision was it to use Luna de Los Crestones as the  
9 account of origin for payment?

10 MS. HENDRICKSON: Objection. Calls for speculation.

11 BY MR. LOMBARD:

12 Q. If you know.

13 THE COURT: Well, you have to lay some foundation for  
14 how he would know first.

15 BY MR. LOMBARD:

16 Q. Mr. Laffer, you indicated that the document that the  
17 government just showed you you assumed was Mr. Nurick's request  
18 to Mr. Tinoco to pay the cabinet fixture company; right?

19 A. Yes.

20 Q. Do you know whether or not Mr. Nurick requested what  
21 account Mr. Tinoco was to use to pay the cabinet fixtures?

22 MS. HENDRICKSON: Objection. Assumes facts not in  
23 evidence.

24 THE COURT: I'll allow you to answer it.

25 THE WITNESS: I would have no way of knowing that.

1 MR. LOMBARD: No further questions.

2 THE COURT: Ms. Hendrickson?

3 MS. HENDRICKSON: No further questions, your Honor.

4 THE COURT: Thank you, sir. You can step down.

5 THE WITNESS: Thank you, Judge.

6 THE COURT: Do you have any further witnesses,

7 Mr. Lombard?

8 MR. LOMBARD: No, your Honor.

9 THE COURT: Does the government have any rebuttal?

10 MS. HENDRICKSON: No, your Honor.

11 THE COURT: Are we ready for jury instructions?

12 MR. LOMBARD: I would, your Honor -- I would reserve

13 the right to make an argument at sidebar at some point.

14 THE COURT: Okay. Is that all right with you,

15 Ms. Hendrickson?

16 MS. HENDRICKSON: Yes, your Honor.

17 THE COURT: Thank you. All right.

18 Ladies and gentlemen, you have heard all the evidence.

19 MS. HENDRICKSON: Your Honor --

20 MR. KLUGE: One other issue, and that was the

21 stipulation that we were going --

22 THE COURT: I'm sorry. Yes. Do you want to do that

23 first?

24 MR. KLUGE: *The Genesis Fund, also known as The Human*

25 *Element, abbreviated T.H.E., was an investment fund which*

1     *operated from approximately 1994 through 2002. Genesis Fund*  
2     *literature described foreign currency trading as the principal*  
3     *activity of the fund. Distributions were made from the Genesis*  
4     *Fund during the time period 1994 through 2002.*

5             *At the time the distributions were made, they were not*  
6     *intended to be gifts, loans, or notes which were required to be*  
7     *paid back by the recipient.*

8             THE COURT: All right. As I said, you've heard all  
9     the evidence, and it's now my duty to instruct you on the law  
10    that applies to the case. Copies of these instructions will be  
11    available in the jury room for you to consult. It is your duty  
12    to weigh and to evaluate all the evidence received in the case,  
13    and in that process, to decide the facts. It is also your duty  
14    to apply the law, as I give it to you, to the facts, as you find  
15    them, whether you agree with the law or not.

16            You must decide the case solely on the evidence and  
17    the law and must not be influenced by any personal likes or  
18    dislikes, opinions, prejudices or sympathy. You will recall  
19    that you took an oath promising to do so at the beginning of the  
20    case.

21            You must follow all these instructions and not single  
22    out some and ignore others. They are all important. Please do  
23    not read into these instructions or into anything I may have  
24    said or done any suggestion as to what verdict you should  
25    return. That is a matter entirely up to you.

1           The indictment is not evidence. The defendant has  
2           pleaded not guilty to the charge. The defendant is presumed to  
3           be innocent unless and until the government proves the defendant  
4           guilty beyond a reasonable doubt.

5           In addition, the government has the burden of proving  
6           every element of the charge beyond a reasonable doubt.

7           The defendant has testified. You should treat this  
8           testimony just as you would the testimony of any other witness.

9           Proof beyond a reasonable doubt is proof that leaves  
10          you firmly convinced the defendant is guilty. It is not  
11          required that the government prove guilt beyond all possible  
12          doubt. A reasonable doubt is a doubt based on reason and common  
13          sense and is not based purely on speculation. It may arise from  
14          a careful and impartial consideration of all the evidence or  
15          from lack of evidence. If, after a careful and impartial  
16          consideration of all the evidence, you are not convinced beyond  
17          a reasonable doubt that the defendant is guilty, it is your duty  
18          to find the defendant not guilty.

19          On the other hand, if, after a careful and impartial  
20          consideration of all the evidence, you are convinced beyond a  
21          reasonable doubt that the defendant is guilty, is your duty to  
22          find the defendant guilty.

23          The evidence you are to consider in deciding what the  
24          facts are consists of the sworn testimony of any witness, the  
25          exhibits received in evidence, and any facts to which the

1 parties have agreed.

2 In reaching your verdict, you may consider only the  
3 testimony and exhibits received in evidence. The following  
4 things are not evidence, and you may not consider them in  
5 deciding what the facts are:

6 One, questions, statements, objections, and arguments  
7 by the lawyers are not evidence. The lawyers are not witnesses.  
8 Although you must consider a lawyer's questions to understand  
9 the answers of a witness, the lawyer's questions are not  
10 evidence. Similarly, what the lawyers have said in their  
11 opening statements, will say in their closing arguments and at  
12 other times is intended to help you interpret the evidence, but  
13 it is not evidence. If the facts, as you remember them, differ  
14 from the way the lawyers state them, your memory of them  
15 controls.

16 Two, any testimony that I have excluded, stricken or  
17 instructed you to disregard is not evidence. I can't remember  
18 whether there was any testimony -- okay.

19 Three, anything you may have seen or heard when the  
20 Court was not in session is not evidence. You are to decide the  
21 case solely on the evidence received at the trial.

22 Evidence may be direct or circumstantial. Direct  
23 evidence is direct proof of a fact such as testimony by a  
24 witness about what that witness personally saw or heard or did.  
25 Circumstantial evidence is indirect evidence; that is, it is

1 proof of one or more facts from which you could find another  
2 fact.

3           You are to consider both direct and circumstantial  
4 evidence. Either can be used to prove any fact. The law makes  
5 no distinction between the weight to be given to either direct  
6 or circumstantial evidence. It is for you to decide how much  
7 weight to give to any evidence.

8           In deciding the facts in this case, you may have to  
9 decide which testimony to believe and which testimony not to  
10 believe. You may believe everything a witness says or part of  
11 it or none of it. In considering the testimony of any witness,  
12 you may take into account, one, the witness's opportunity and  
13 ability to see or hear or know the things testified to; two, the  
14 witness's memory; three, the witness's manner while testifying;  
15 four, the witness's interest in the outcome of the case, if any;  
16 five, the witness's bias or prejudice, if any; six, whether  
17 other evidence contradicted the witness's testimony; seven, the  
18 reasonableness of the witness's testimony in light of all the  
19 evidence; and, eight, any other factors that bear on  
20 believability.

21           The weight of the evidence as to a fact does not  
22 necessarily depend on the number of witnesses who testify. What  
23 is important is how believable the witnesses were and how much  
24 weight you think their testimony deserves.

25           You are here only to determine whether the defendant

1 is guilty or not guilty of the charge in the Indictment. The  
2 defendant is not on trial for any conduct or offense not charged  
3 in the Indictment.

4           Some evidence in this trial consisted of documents  
5 written in Spanish that have been subsequently translated into  
6 English. For those documents, the evidence you are to consider  
7 and on which you must base your decision is only the English  
8 language translation provided to you. Although some of you may  
9 know the non-English language used, you must disregard any  
10 meaning of the non-English words that differs from the official  
11 translation. You may consult the Spanish version of the exhibit  
12 to view these signatures on the documents.

13           You have heard testimony that the defendant made  
14 certain statements. It is for you to decide, one, whether the  
15 defendant made the statements, and, two, if so, how much weight  
16 to give to them. In making those decisions, you should consider  
17 all the evidence about the statements, including the  
18 circumstances under which the defendant may have made them.

19           You have heard testimony from persons who, because of  
20 education or experience, were permitted to state opinions and  
21 the reasons for their opinions. Such opinion testimony should  
22 be judged like any other testimony. You may accept it or reject  
23 it and give it as much weight as you think it deserves  
24 considering the witness's education and experience, the reasons  
25 given for the opinion, and all the other evidence in the case.

1           Certain charts and summaries have been admitted in  
2 evidence. Charts and summaries are only as good as the  
3 underlying supporting material. You should therefore give them  
4 only such weight as you think the underlying material deserves.

5           The parties have agreed to certain facts that have  
6 been stated to you. You should therefore treat these facts as  
7 having been proved.

8           The defendant is charged in the Indictment with  
9 evasion of payment of income tax in violation of Section 7201 of  
10 Title 26 of the United States Code. In order for the defendant  
11 to be found guilty of that charge, the government must prove  
12 each of the following elements beyond a reasonable doubt:

13           First, the defendant owed federal income tax for  
14 calendar year 1995; second, the defendant made an affirmative  
15 attempt to evade the payment of such tax; and, third, in  
16 attempting to evade the payment of such tax, the defendant acted  
17 willfully.

18           An affirmative act to evade payment of income tax may  
19 include concealing assets or covering up sources of income,  
20 handling one's affairs to avoid making records usual in  
21 transactions of the kind, placing assets in the name of other  
22 individuals or entities, using bank accounts and conducting bank  
23 transactions in the names of other individuals or entities,  
24 filing of a false Offer in Compromise with the Internal Revenue  
25 Service, transacting business in cash or cashier's checks, and



1 any other conduct, the likely effect of which would be to  
2 mislead.

3 An affirmative act must be a commission rather than an  
4 omission. A person may not be convicted of tax evasion on the  
5 basis of willful omissions alone. A person must also undertake  
6 an affirmative act of evasion.

7 The government has charged the defendant with multiple  
8 affirmative acts. You must all agree on the affirmative act the  
9 defendant committed. The affirmative acts charged by the  
10 government are, one, creating and using Luna de Los Crestones  
11 SA, a Costa Rican corporation and a bank account in the same  
12 name at Banco Interfin, Costa Rica, from at least on or about  
13 May 18, 1999 until at least on or about July 23, 2001.

14 Two, using account number ending in 7304 in the name  
15 of NG Enterprises, Ltd., at Ansbacher Jersey, Ltd., into which  
16 deposits from International Centrix Wells Fargo Bank, Laguna  
17 Beach, California, were made and causing the balance of the  
18 account, \$133,560.98 to be transferred on or about January 3,  
19 2001 to an account ending in 9322 at Ansbacher Jersey, Ltd.,  
20 belonging to John Biber.

21 Three, withdrawing the equity on his residence by  
22 obtaining a \$140,000 mortgage from John Biber's company on or  
23 about February 2, 2001, and using the funds for his personal  
24 benefit rather than paying the IRS.

25 Four, signing on or about April 19, 2001, and filing

1 with the IRS on or about May 16, 2001 a joint Offer in  
2 Compromise Form 656 that was materially false and fraudulent in  
3 that defendant falsely claimed in Item 6 that there was doubt as  
4 to collectability of the tax liability of 1995 because he had,  
5 quotes, *insufficient assets and income to pay the full amount*  
6 when, as he well knew, he had sufficient income and assets to  
7 pay the full amount.

8 And five, signing on or about April 19, 2001, and  
9 filing with the IRS on or about May 16, 2001, a joint Offer in  
10 Compromise Form 656 that was materially false and fraudulent in  
11 that defendant omitted therefrom information about the following  
12 assets: One, a 1999 GMC pickup truck; two, Aztec Irrevocable  
13 Trust bank account ending in 091-2 at Downey Savings & Loan,  
14 Newport Beach, California; and three, the bank accounts in the  
15 name of Luna de Los Crestones SA at Banco Interfin Costa Rica.

16 You must all agree beyond a reasonable doubt that the  
17 defendant committed at least one affirmative act to evade the  
18 payment of income tax, with all of you agreeing on the same act.

19 In order to prove that the defendant acted willfully,  
20 the government must prove beyond a reasonable doubt that the  
21 defendant knew federal tax law imposed a duty on him, and the  
22 defendant intentionally and voluntarily violated that duty. The  
23 government must prove beyond a reasonable doubt that the  
24 defendant had the unlawful intent to evade the payment of his  
25 income taxes. Evidence that the defendant in good faith

1 followed the advice of counsel would be inconsistent with such  
2 an unlawful intent. Unlawful intent has not been proved if the  
3 defendant, before acting, made full disclosure of all material  
4 acts to an attorney, received the attorney's advice as to the  
5 specific course of conduct that was followed, and reasonably  
6 relied on that advice in good faith.

7 All right. It's time for the government's closing  
8 argument. And I remind you again that what the attorneys say  
9 during argument is not evidence. Each attorney will outline for  
10 you his or her interpretation of what the evidence shows. If  
11 the attorneys state the evidence to you differently from your  
12 recollection of the evidence, you should rely on your own  
13 recollection of the evidence. And if the attorneys discuss the  
14 law and it's different from my instructions on the law, you must  
15 rely on the law as I have stated it to you.

16 First, as I said, the government will give an opening  
17 argument; then the defendant will give an opening argument; and  
18 then the government will give a closing argument.

19 Just keep an eye on the clock, Ms. Hendrickson, or  
20 I'll remind you that we would like to take a break around 10:45,  
21 whenever is a convenient time if you're not done by then.

22 MS. HENDRICKSON: Thank you, your Honor.

23 *Government's Opening Argument*

24 MS. HENDRICKSON: Counsel, the Court, ladies and  
25 gentlemen of the jury, we've thrown a lot of information at you

1 in a very short period of time. When you have a chance to look  
2 at the evidence, you will see that the government has proved  
3 that Mr. Nurick acted intentionally to evade the payment of his  
4 1995 income taxes.

5 In opening, counsel told you that we would take you on  
6 a global tour of tax evasion, and with the records and the  
7 testimony, indeed we have.

8 First we started in California, where Mr. Nurick lived  
9 and also where Ms. Teresa Vogt lived and operated as the  
10 administrator of the Genesis Fund. The Bahamas was used by  
11 Mr. Nurick to incorporate NG Enterprises, Inc. Costa Rica was  
12 where Mr. Nurick had a bank account in the name of Luna de Los  
13 Crestones and was also where Genesis Fund was run for a period  
14 of time, based on Teresa Vogt's testimony, and Mr. Tinoco  
15 assisted in issuing the distribution checks for the Genesis  
16 Fund.

17 The Isle of Jersey is relevant to this case because  
18 Mr. Nurick had a bank account there in the name of  
19 NG Enterprises, Inc. And then finally go over to Hong Kong  
20 where there were a few wire transfers from Asia Pacific, which  
21 you will see in the records, and those also were distributions  
22 of funds from the Genesis Fund.

23 If we could pull up Exhibit 9. There is no dispute  
24 that Mr. Nurick filed a 1995 amended income tax return that  
25 showed he owed on line 20, \$106,452. You can see the stamp from

1 the IRS is May of 2000. You can see Mr. Nurick's signature and  
2 Tony Lam's signature is in May of 2000.

3 When we review the evidence with you, you will see  
4 there is no question that Mr. Nurick had the ability, had the  
5 assets to pay this tax liability in full the day he mailed this  
6 amended tax return. When he mailed it, he didn't send in any  
7 payments.

8 Now, during the course of this trial, we've mentioned  
9 several different entities that Mr. Nurick has used to hold  
10 titles to property or to use for the names on bank accounts.  
11 The key ones I want you to focus on are the ones that were used  
12 primarily in 2000 and 2001, and that would be between the filing  
13 of this amended return in May of 2000 and the filing of the  
14 Offer in Compromise with the IRS in April of 2001.

15 During that time frame, you will see the evidence  
16 shows that Mr. Nurick used nine different nominees to control  
17 money: I-Control NB Trust; Luna de Los Crestones;  
18 NG Enterprises; Nurick & Associates, Inc.; Nurick Associates  
19 Trust; Aztec Irrevocable Trust; Sierra Truck Holding Trust;  
20 Shaver Property Trust; Shaver Lake Limited Partnership.

21 When you consider all of this evidence, the most  
22 important asset you can take back with you to the jury room is  
23 your common sense. When you look at these transactions, you  
24 don't have to be an expert in tax law or offshore banking. Look  
25 at these transactions and say does this make sense from a

1 business purpose or from a financial purpose, or the main point  
2 of some of these transactions, to create a trail that makes it  
3 very difficult for the IRS to follow or makes it impossible to  
4 be able to trace a certain company, such as Luna de Los  
5 Crestones, to Mr. Nurick. We're going to go through some of the  
6 evidence with you to show his control of the money over a long  
7 period of time, the testimony of Teresa Vogt and Denise  
8 Taylor-Fraser. Mr. Nurick was Luna de Los Crestones; that was  
9 his corporation, that was his money that was received.

10 This case is about choices. Mr. Nurick had a choice.  
11 He could pay the \$106,000 right away when he filed the amended  
12 return or he could take deliberate intentional acts to commit  
13 fraud. We are sitting here today because Mr. Nurick made that  
14 second choice.

15 Mr. Nurick testified that he is an engineer.  
16 Engineers are analytical, precise, and very detail oriented.  
17 Mr. Nurick also testified that he had a plan. The government  
18 submits to you he did have a plan, and that plan was to evade  
19 his income taxes for 1995.

20 Recall Tony Lam's testimony, his CPA who prepared a  
21 lot of the tax returns. He had Mr. Nurick sign a piece of paper  
22 that Mr. Lam had typed up to say, *Make sure that I got this*  
23 *right. Here's all the information you gave me for your 1999*  
24 *return and your 2001.* Mr. Nurick signed it. That will be in  
25 Exhibit 347 for you to review.

1           Mr. Lam testified that Mr. Nurick never told him about  
2 the Ansbacher account in Jersey in the name of NG Enterprises.  
3 Mr. Lam testified he did not know about the Luna de Los  
4 Crestones account, Banco Interfin, in Costa Rica.

5           Similarly, Lyly Nguyen said, *Mr. Nurick never told me*  
6 *about the Ansbacher account, NG Enterprises. Mr. Nurick never*  
7 *told me about the Luna de Los Crestones account. If he had told*  
8 *me about those accounts and his control of that money, I would*  
9 *have put it on the form that we submitted to the IRS. She*  
10 *repeatedly said that.*

11           Mr. Nurick also never filed any foreign bank account  
12 reports. Recall Revenue Agent Jean Pugh's testimony that if you  
13 have a balance of over \$10,000 during any time of the year,  
14 you're required to file that form with the government. When you  
15 look through the schedules of the money that Mr. Nurick  
16 received, you will see many of the transactions were over  
17 \$10,000. So there was no question he had a duty to file those  
18 forms for 1999, for Ansbacher and for Luna de Los Crestones; for  
19 2000 for Ansbacher and Luna de Los Crestones; for 2001 for  
20 Ansbacher and Luna de Los Crestones.

21           His actions are entirely consistent. He did not tell  
22 Tony Lam about the accounts, he did not tell Lyly Nguyen about  
23 the accounts, and he did not tell the government about the  
24 accounts because he didn't want the government to know he had  
25 that much money sitting offshore because if he did, the

1 government was not going to take anything less than a hundred  
2 percent to pay that balance in 1995.

3 One of the things that was on the list of items that  
4 Mr. Nurick gave to Mr. Lam was interest income. For 2000, it  
5 shows \$29. On his tax return for the year 2000 on line 8-A  
6 where it reports interest income, it's \$29. In fact, Mr. Nurick  
7 had significantly more interest income than that.

8 You have in evidence copies of these statements. We  
9 have taken just the line item from each of these quarterly  
10 statements. You can see in the upper right here, it says  
11 NG Enterprises, Ltd. This is the account at Ansbacher. For the  
12 first quarter, March 2000, interest is over \$600; second  
13 quarter, \$1,200; third quarter, \$1,300; fourth quarter, \$1,300.

14 There is the total at the bottom on that previous  
15 page. All right. Looking up here at the top, we have the  
16 amount written up here. If you take all of those numbers and  
17 total them, Mr. Nurick had more than \$4,400 in interest income,  
18 just from that Ansbacher account, NG Enterprises. He did not  
19 disclose that because he did not tell Tony Lam about that  
20 account.

21 If we could go to Exhibit 411, please. This is a fax  
22 letterhead that says Nurick & Associates, and you can't see the  
23 last part of Mr. Nurick's name. It's dated December 6, 2000.  
24 The subject line is *1995 tax assessment, to Lyly Nguyen from*  
25 *Bill Nurick. Lyly, well, here it is. We still have 1997 to go.*



1     *Let me know how we are going to proceed. As you know, I do not*  
2     *have this much money to cover this year, let alone 1997. And*  
3     *there is one more sentence.*

4             The same time Mr. Nurick is writing this letter to  
5     Ms. Nguyen, he knows he has \$133,000 sitting in the Ansbacher  
6     account. He also knows the IRS just sent him a letter saying we  
7     *want you to pay based on the amended return you filed.*

8             If we could bring up Exhibit 409, please. Now, this  
9     is a chart of balances in Mr. Nurick's bank account as of  
10    April 19, 2001. The significance of that date is that it's when  
11    he signed the Offer in Compromise that included the initial  
12    *form, I offer to pay \$10,000 of my \$157,000 liability.* Also  
13    included attached financial statements for him individually  
14    regarding his assets and his income and a financial statement  
15    for Nurick & Associates, his business.

16            The accounts, the first two listed up here, are the  
17    accounts that Mr. Nurick did list on his financial statements,  
18    although he listed both of them with a balance of a thousand  
19    dollars. And as he conceded on cross-examination, there was  
20    never an amount even close to a thousand dollars. The balances  
21    were always significantly higher. The Clovis account had  
22    \$5,400; the Nurick & Associates account had 7,500.

23            And what other accounts did he have? He had just  
24    opened an account in the name of Downey Savings & Loan in the  
25    name of Aztec Irrevocable Trust in December of 2000. That

1 account had \$13,000 sitting in it when he filed the Offer in  
2 Compromise with the IRS. He did not list this account on the  
3 Offer in Compromise.

4 Now, you heard a lot of testimony about question 19-F  
5 and whether he had an interest in a trust, and there was some  
6 confusion about that, but Ms. Nguyen was consistent. She said,  
7 *If he had told me he had a bank account that he had control of*  
8 *the money, he himself, not someone else, I would have told him*  
9 *to list it on the form.*

10 The next item listed is the Ansbacher Jersey account,  
11 \$133,000. As you recall, that was moved in January 3, 2001 to  
12 Mr. Biber. Mr. Biber testified to you regarding that  
13 transaction, and Mr. Nurick, on cross-examination, admitted that  
14 the money was sitting there in Mr. Biber's account and then did  
15 sit there for a little while. That was also consistent with  
16 Mr. Biber and Mrs. Biber's testimony.

17 So although it got transferred to a different account,  
18 he could have had access to that money if he wanted it. He  
19 could have used it, instead of transferring it to Mr. Biber's  
20 account -- he could have used it to pay his taxes in full for  
21 1995.

22 The last item listed is Luna de Los Crestones, the  
23 account at Banco Interfin that at that time, Revenue Agent Pugh  
24 calculated that at a minimum, it had a balance of \$201,000. So  
25 when you total all of this money from the time December 2000,

1 when he gets a notice from the IRS saying, *Thank you for your*  
2 *amended return. We agree you owe us \$106,000. You also owe*  
3 *another 50,000 in interest. Please send us the money.*

4 Between that five-month period, Mr. Nurick took many  
5 steps to get rid of all of his assets so when the IRS was  
6 evaluating his ability to pay in the Offer in Compromise, they  
7 wouldn't find anything, and they would take much less than 100  
8 percent of the balance due.

9 Now, we'll walk you through this chronologically to  
10 show you what assets Mr. Nurick had during this time frame. So  
11 again the critical time frame we're focusing on is May of 2000  
12 when the amended return is filed, April of 2001 when the Offer  
13 in Compromise is filed. So May 2001, he has -- I'm sorry. May  
14 of 2000, he has the Clovis Bank account. If we could bring up  
15 that exhibit. And it shows it's in the name of his wife,  
16 Eleanor Grochowski, lists his Shaver Lake address. And as of  
17 May 30th, the balance in this account was \$7,685. And at no  
18 time during this month does it ever get below \$3,900.

19 If we could go to the next exhibit, this is his  
20 business bank account at Wells Fargo. You can see on May 30th,  
21 the balance is \$50,000. Go to the next exhibit. Now, this is a  
22 Currency Transaction Report. Revenue Agent Pugh testified about  
23 this and said that if a cash transaction is more than \$10,000,  
24 this form gets generated by the bank. Date of the transaction,  
25 June 1, 2000. Mr. Nurick and his wife had just signed the

1 amended tax return. Days before, mailed it into the IRS saying  
2 we owe \$106,000. Within a week, Ms. Grochowski is at the bank  
3 withdrawing \$38,000. Walks out with \$38,000 in currency.

4 If we could go to the next exhibit. Here is the  
5 Ansbacher account, and this is for the time frame June, no less  
6 than \$126,000 in this account.

7 Now, we have a couple charts to show you Genesis funds  
8 that were received by Mr. Nurick from 2000 and 2001. One of the  
9 points of factual dispute we have in this trial is whether  
10 Mr. Nurick in fact was receiving Genesis funds and controlling  
11 those funds after he filed the amended tax return.

12 Now, you heard Mr. Nurick testify that he sold his  
13 interest in Genesis to Mr. Tinoco, and Mr. Laffer talked about  
14 that, too. When you go back in the jury room and look at all of  
15 these exhibits, you will not find one document to support that.  
16 It is only Mr. Nurick's word. And you should establish his  
17 credibility based on looking at the other documents and the  
18 other testimony.

19 Recall that Mr. Nurick testified that he was getting a  
20 fantastic return on Genesis: three percent per month; 36  
21 percent per year. That's a huge return on investment. It  
22 doesn't make any sense if you're making that kind of money to  
23 sell your investment. If you're making 36 percent, why would  
24 you sell it to someone else? The answer is you wouldn't. You  
25 would keep control of it, you would keep collecting the money.

1 Mr. Nurick didn't want to pay his taxes because he  
2 wanted to keep his money invested because he was making a lot of  
3 money. So from the time he filed the amended return, which is  
4 the first date up here, May 30th, through January of 2001,  
5 \$281,000 that he received from Genesis, and based on the  
6 testimony, it's not disputed, that money he received from  
7 Genesis after 1999 would all be taxable, would all be a capital  
8 gain. So this is money he had available to him at the time he's  
9 getting ready to prepare the financial statement that's going to  
10 be attached to the Offer in Compromise.

11 The Offer in Compromise is signed on April 19, 2001.  
12 Right after that, in the next four months, he gets over  
13 \$200,000. Again, whether you want to say it's money he's  
14 controlling because he still owns Luna de Los Crestones, which  
15 is the government's position, or you want to say it's money  
16 Mr. Tinoco is sending him, it's money available to pay his  
17 taxes.

18 In this chart, we have over \$487,000 that Mr. Nurick  
19 had available to pay \$106,000 liability. This also does not  
20 include the \$140,000 he got from Mr. Biber. So he had over  
21 \$600,000 during this 18-month time frame that he could have used  
22 to pay his taxes in full. He intentionally did not.

23 Now, this is a copy of the notice that the IRS sent  
24 Mr. Nurick. You can see in the upper right here, it's dated  
25 December of 2000. You can see right here, it says it's

1 regarding 1995. You can see up here, the fax heading,  
2 December 6, 2000. And then focusing here, *as you requested --*  
3 *because he filed the amended income tax return for 1995 -- here*  
4 *is what you owe, \$106,000; plus interest, \$157,000.*

5 And again turning back to this fax that Mr. Nurick  
6 sent to Lyly Nguyen, it's the same time he got this notice.  
7 Now, this is how -- these type of documents are how the  
8 government proves circumstantially what Mr. Nurick's intent was  
9 when he was taking actions, when he was collecting money, when  
10 he was spending money. This document is dated right at the same  
11 time he gets the notice, he says he doesn't have much money.  
12 The evidence shows that is not true.

13 Mr. Nurick had assets of \$133,000 in the Ansbacher  
14 account in the name of NG Enterprises. He also had  
15 approximately \$150,000 in equity in his cabin in Shaver Lake.  
16 He also had control of the Banco Interfin in the name of Luna de  
17 Los Crestones. When he testified, he did not deny  
18 NG Enterprises was his company, but he did not report the  
19 existence of that account or the interest income from that  
20 account to the IRS, to Tony Lam, or to Lyly Nguyen because he  
21 wanted to conceal it from the government.

22 This is a copy of the Ansbacher account in the name of  
23 NG Enterprises which shows that there is a balance of \$133,000  
24 in December of 2000. So when Mr. Nurick is writing that fax to  
25 Ms. Nguyen, he knows this money is sitting there. From looking

1 at it before, we know the money has been sitting there for a  
2 period of time. He intentionally did not disclose it to her.

3 Also during this time frame, December of 2000, right  
4 after he knows the IRS wants him to pay the taxes for 1995, in  
5 his Clovis Community account that is in the name of his wife,  
6 there are three different deposits that total \$26,000 in  
7 November and December of 2000. In his business bank account,  
8 Nurick & Associates at Wells Fargo, the ending balance the end  
9 of December of 2000 is over \$9,000.

10 Another bank account they have at Clovis has  
11 approximately 21,000 at the beginning of December; has \$11,600  
12 in the middle of January, 2001. Another account, savings  
13 account has another \$4,000, December 17, 2000.

14 Another account that had just been opened, because you  
15 can tell previous statement, the balance says zero, so this is a  
16 new account, in the name of Aztec Irrevocable Trust, there is  
17 one deposit for \$11,498, which was from Genesis funds, which is  
18 available to Mr. Nurick.

19 He also had the 1999 GMC truck at this time. He had  
20 bought it about a year and a half before. There is no question  
21 that Mr. Nurick had the ability to pay his tax liability in full  
22 when he gets that letter from the IRS in December of 2000. No  
23 question.

24 Now, the Court explained to you what the elements of  
25 tax evasion are. What the government has to prove is that he

1 had a tax due and owing, which we have just discussed, \$106,452;  
2 that he made some affirmative attempt to evade or defeat the  
3 payment of that tax; and that he acted willfully.

4 Now, Judge Fischer listed some of the affirmative acts  
5 that the government has charged him with, and I'm not going to  
6 read them again. I'm just going to emphasize the different  
7 points: the using of the Luna de Los Crestones account; having  
8 the bank account at Banco Interfin in the name of Luna de Los  
9 Crestones; not disclosing it to the IRS; and using it to hide  
10 his ability to pay from the IRS.

11 He also used the account in the name of NG Enterprises  
12 and transferred money from that account to his friend,  
13 Mr. Biber; again, not disclosing it to Tony Lam, not disclosing  
14 it to Lyly Nguyen, because it was money he had available to pay  
15 his taxes. He did not want the IRS to know that.

16 The withdrawing of the equity on his house, you heard  
17 the testimony from John Biber. You will see the property  
18 transactions, the title, some of the title company's files and  
19 the deeds, and you will see that he got \$140,000 in February of  
20 2001. And we're going to show you a slide that is going to show  
21 how he spent all that money. What he didn't do was pay his  
22 taxes with that money so that's one other affirmative act the  
23 government is saying this is how we prove he intentionally  
24 committed tax fraud.

25 Finally, the last two affirmative acts are regarding



1 the offer of the -- the Offer in Compromise that was filed. Two  
2 things were false about that: one, that he didn't list all of  
3 his assets; that he left off the bank account at Aztec  
4 Irrevocable Trust; that he left off the bank account at Luna de  
5 Los Crestones at Banco Interfin, which he still controlled.

6 The other part that's false is he said he had  
7 insufficient assets to pay the full amount. The records show  
8 you there is no question that Mr. Nurick had the ability to pay  
9 that \$106,000 debt in full or the \$157,000, when you add the  
10 interest.

11 Now, this is the chart to help you understand the  
12 timeline of events that we've just gone over. First, the filing  
13 of the amended return; Ms. Grochowski taking \$37,000 out of the  
14 bank right after it's filed; IRS sending him a notice saying  
15 *send us the 106,000 plus interest*. Within a month, he closes  
16 that Ansbacher account, which you'll see was open for several  
17 years. You have the bank statements. Transfers that money to  
18 John Biber's account.

19 Another document he gets, January 15th, IRS Notice of  
20 Intent to Levy. He still has not paid. IRS is sending another  
21 letter saying *we are going to take more action if you do not*  
22 *pay*. So what does Mr. Nurick do? He gets a Deed of Trust from  
23 his friend, Mr. Biber, has it recorded at the Fresno County  
24 Recorder's office, and now, instead of having \$150,000 in  
25 equity, when the IRS looks at his financial statement, now he

1 only has \$10,000 in equity. He has taken it from 150, because  
2 he had a market value of about 250, which is what he put on the  
3 Offer in Compromise which we'll look at in a second, and he owed  
4 \$100,000 to Bank of America. So there's \$150,000 of equity. As  
5 soon as he knows the IRS is going to take action, as soon as  
6 he's discussing with Ms. Nguyen the potential Installment  
7 Agreement to pay over time, they're discussing the Offer in  
8 Compromise, with all of those things, he knows he has to fill  
9 out financial statements and give them to the IRS. And  
10 Ms. Nguyen testified that that's how they would evaluate his  
11 ability to pay. So Mr. Nurick is engaging in intentional  
12 conduct to make it very difficult for the IRS to know what  
13 assets he truly owns.

14 There's a series of cash withdrawals, and accounts are  
15 closed at Clovis Community Bank. Another IRS letter is sent on  
16 March 12, 2001, regarding the Notice of Intent to Levy for  
17 taxes. And at this point, Mr. Nurick sends in \$500 on the  
18 \$157,000 balance, and you heard testimony that's all he sent in.  
19 He never sent in anything else for 1995.

20 Now, you heard testimony from the Bibers regarding  
21 that \$140,000 loan. And Mr. Biber testified that it was a good  
22 business decision because he had a company, Elsdon Corporation,  
23 and he wanted to diversify, and so giving Mr. Nurick a loan with  
24 seven percent interest was a good business decision for him.

25 We also showed you a check, and I discussed it with

1 Mr. Laffer this morning, for \$9,800 that was payment of the  
2 interest in full for the entire year on that promissory note.  
3 When Mr. Nurick testified, he said that he paid that full year  
4 of interest ahead of time because he didn't want it hanging over  
5 his head while he was moving to Costa Rica. So when he's paying  
6 money to his friend, he doesn't want it hanging over his head,  
7 and he pays a multimillionaire \$9,800 way in advance of when he  
8 owes it. But when it comes to sending a check to the IRS, *well,*  
9 *we'll just kind of put them off and see if we can negotiate a*  
10 *much lower dollar figure.*

11 The \$140,000 loan we will show you he deposits in  
12 Clovis Community Bank and spends within two weeks. Mr. Nurick  
13 admitted on cross-examination, none of that money went to pay  
14 taxes. So \$500 is the only amount he ever paid for his '95  
15 taxes. Mrs. Biber testified that she knew that the Nuricks had  
16 remodeled their cabin, and in fact Mr. Nurick admitted that  
17 August Construction had helped doing remodeling on his cabin in  
18 Shaver Lake.

19 Now, Mrs. Biber was also asked some questions about an  
20 animal charity, and there was some discussion with Mr. Biber and  
21 Mrs. Biber about whether it was a surprise and perhaps something  
22 that the husbands were going to hide from Mrs. Biber and  
23 Ms. Grochowski and surprise them later. The evidence does not  
24 support that story at all. That is, in fact, what it is, a  
25 story. The money is moved in January of 2001, \$133,000.

1 Mr. Biber is a multimillionaire. He says the banker calls him  
2 and says *what do you want to do with this money?* Well, then he  
3 has some health issues, they talk about an animal charity. Year  
4 later, Mr. Biber goes down to visit Mr. Nurick in Costa Rica,  
5 January of 2002. Mr. Biber and Mrs. Biber both testified that  
6 after that trip in January of 2002, so a full year after the  
7 money is transferred, eight months after the Offer in Compromise  
8 was filed with the IRS, *let's have some discussion about an*  
9 *animal charity*, and it's such a surprise to Mrs. Biber, she's  
10 doing the research herself. So she does research. They find  
11 out it's too expensive. It never happens. Later in 2004, some  
12 insurance policy is purchased. There is no question, that money  
13 was moved to hide it from the IRS. Mr. Nurick and Mr. Biber  
14 were good friends. He transferred it, figured they would worry  
15 about it later. Well, as far as Mr. Nurick was concerned, as  
16 long as it was hidden from the IRS and not connected to him, he  
17 was okay.

18 The Ansbacher statement clearly shows -- because they  
19 both had accounts at the same -- at Ansbacher, on January 3,  
20 2001, NG Enterprises, Ltd., Mr. Nurick, transferred the \$133,000  
21 to Mr. and Mrs. Biber. Then days later, the account is closed.  
22 *Now, when I fill out that paperwork with the IRS, now I am not*  
23 *going to disclose this asset because it's not in my name*  
24 *anymore.*

25 THE COURT: How much more do you have,

1 Ms. Hendrickson?

2 MS. HENDRICKSON: Probably about ten minutes,  
3 your Honor.

4 THE COURT: Do you want to take a break? No. Go on  
5 for ten minutes?

6 Okay. Go ahead.

7 MS. HENDRICKSON: This is a summary of what happened  
8 with the \$140,000 loan from Mr. Biber. Money to August  
9 Construction; money Mr. Nurick said was a down payment for his  
10 son's house; legal fees to Ms. Nguyen; check to his brother for  
11 medical expenses; the interest payment; cash withdrawal,  
12 \$20,000; more remodeling; another cash withdrawal. Two weeks,  
13 132,000 of that 140,000 is spent. And IRS is not listed  
14 anywhere. Not even another \$500.

15 Now, we're looking at what assets they have in April  
16 of 2001 before they file the Offer in Compromise. This Clovis  
17 Community account ending in 0931, closed. The next one, 0823,  
18 at Clovis, also closed. Now, April 2001, Mr. Nurick and  
19 Ms. Nguyen both testified the money -- they're exchanging  
20 information back and forth, faxes, talking on the phone, trying  
21 to get all the paperwork together to file either the Installment  
22 Agreement or the Offer in Compromise.

23 So what assets does Mr. Nurick have in April of 2001?  
24 First of all, he has this account that has a balance of 5,000,  
25 not 1,000. He has the business account that has a balance of

1 7,000, not 1,000. He has the Aztec bank account that has  
2 13,000. This is the schedule we showed you before. Yes, he  
3 moved the Ansbacher money, but he moved it into a friend's  
4 account. It was just parked there. He had access to it. So he  
5 had a total of \$361,000 he could have used to pay the IRS. He  
6 intentionally did not.

7 Now, Luna de Los Crestones you have heard a lot of  
8 testimony about and a lot of questions about, and we're going to  
9 show you his control of that account which shows it's his  
10 account. First you have the minutes that list Luna de Los  
11 Crestones, that say Mr. Nurick is the authorized person and  
12 gives his Shaver Lake address.

13 He's the one applying for a credit card, and on the  
14 paper copy -- it's hard to read up here -- you will be able to  
15 see it says *Luna de Los Crestones*. Then on the Spanish version  
16 of this, you will see his original signature and his passport  
17 information. A \$60,000 wire transfer I just showed to  
18 Mr. Laffer, money going from NG Enterprises to Luna de Los  
19 Crestones. It's Mr. Nurick's account. That shows the transfers  
20 I went through with Mr. Laffer.

21 Then there is documentation requesting a transfer of  
22 \$48,000 payable to his wife, Eleanor Grochowski, from Luna's  
23 checking account. Here is a copy of the check, July of 2000,  
24 \$48,000 payable to Eleanor Grochowski and in fact goes into  
25 their bank account in Clovis.

1 Floors, Cabinets & Fixtures, these I just went over  
2 with Mr. Laffer, clearly Mr. Nurick is directing where these  
3 funds are going.

4 Robert Nagle, Mr. Nurick testified that he redid old  
5 cars, so he got \$8,000 for some work he did. Nurick &  
6 Associates, Inc., another \$10,500, from Luna de Los Crestones.  
7 Mr. Nurick's bank account. That's a copy of the check.

8 The Genesis funds received, again I went over it with  
9 Mr. Laffer. It doesn't make any sense to say Luna de Los  
10 Crestones is not his account because he reported more to the IRS  
11 than we can trace to him in 1999 and in 2000. He reported  
12 \$285,000 in '99. In 2000, we could trace \$303,000 to him, again  
13 including the transfers to Luna de Los Crestones, and that  
14 \$48,000 that we just saw is right here, so it's money that came  
15 from Luna de Los Crestones. Mr. Laffer included that in his  
16 computation. He just didn't include the check that went  
17 directly there. Well, the government submits there's no  
18 distinction there. Mr. Nurick is controlling everything that is  
19 going on with this account.

20 2000 he reported more than we could trace to him.

21 If you credit what Mr. Laffer said, then there is  
22 another \$140,000 somewhere in some other bank account that the  
23 government doesn't know about that Mr. Nurick also received  
24 Genesis distributions in. What makes more sense is that it's  
25 Luna de Los Crestones he controls and he has controlled '99,

1 2000, and 2001. Same thing for 2000.

2 We'll just move on. June 2000, this is the summary of  
3 the Genesis funds that Ms. Nguyen prepared and I showed to  
4 Mr. Laffer, and his schedule and the government's schedule,  
5 neither of them include any money for 1997, but Mr. Nurick told  
6 Ms. Nguyen he had \$44,000. Mr. Laffer testified Mr. Nurick's  
7 records are better than what had been introduced here, and at  
8 least based on this one document, Mr. Nurick has some other bank  
9 account the government is not aware of and could not trace money  
10 to him, so there is no question that he is controlling Luna de  
11 Los Crestones. He's profiting from that money and continues to  
12 spend it.

13 The government showed total amounts received of  
14 \$1 million to him. Remember what Revenue Agent Pugh said. She  
15 did not include a distribution in her chart unless we had both  
16 sides of the transaction, so Mr. Laffer's chart has more money,  
17 and the government agrees that the bank records that you have in  
18 evidence support that he did get more distributions, but if we  
19 weren't able to tie it directly to him, then it was not included  
20 in this chart. And again the important point about this is that  
21 he's receiving money from Genesis '95, '96, '97, '98, '99, 2000,  
22 2001, 2002. He could have used that money from '99, 2000, 2001,  
23 2002 to pay his 1995 income taxes. He intentionally did not.

24 Teresa Vogt testified that the sources of the checks  
25 were all distributions from Genesis so there's no dispute the



1 Genesis money is being distributed. The dispute is over  
2 Mr. Nurick's control. When you look at the summaries the  
3 government has prepared, when you look at the bank records, when  
4 you look at all of the evidence and how it corroborates the  
5 testimony of the witnesses and how it shows what Mr. Nurick did  
6 with the money, then your only conclusion will be that the  
7 government has proved beyond a reasonable doubt that Mr. Nurick  
8 has intentionally committed tax fraud and did not pay his 1995  
9 income taxes on purpose, and it will be your duty to return a  
10 verdict of guilty.

11 THE COURT: All right. Thank you.

12 Ladies and gentlemen, don't talk about the case or  
13 form or express any opinions about the case until it's finally  
14 submitted to you. We will take a 15 minute break.

15 (Recess taken)

16 THE COURT: Everyone is back.

17 Mr. Lombard, you look like you're ready to go. You  
18 may proceed.

19 MR. LOMBARD: Thank you, your Honor.

20 *Defense Closing Argument*

21 MR. LOMBARD: Government counsel is correct about one  
22 thing in this case, that this is a case about choices, and the  
23 choice that the government made is that if you don't pay your  
24 taxes when they want you to pay them, they're going to indict  
25 you. That's the choice they made.

1           Mr. Nurick made the choice to pay his taxes over a  
2 period of time. Not once did we hear government counsel talk in  
3 her closing argument about the Installment Agreement request,  
4 the document that was in Mr. Nurick's lawyer's file, the one  
5 that she filled out, gave to him, he signed, and she didn't file  
6 it. And yet it looks -- looking from the government's  
7 perspective, he amends his taxes, creates \$100,000 tax  
8 liability, and then they look at the tax summary sheet as to how  
9 much money does he owe, and all they see is a \$500 payment and  
10 then an Offer in Compromise, and they don't see the Installment  
11 Agreement.

12           Yeah, that would seem egregious. How dare he insult  
13 the Department of Justice or, I should say, the IRS when you owe  
14 \$100,000 and you only pay \$500. But there is another side to  
15 the story. And that's the side of Lyly Nguyen, and Lyly  
16 Nguyen's testimony is uncontradicted. It's corroborated, and  
17 she tells you she messed up. And she wouldn't talk to me. She  
18 wouldn't talk to my investigator. She wouldn't talk to  
19 Mr. Laffer because she knew she messed up. She hired a lawyer.  
20 The judge read you the instructions. And I want you to pay  
21 attention to those instructions, specifically the reliance on  
22 counsel defense. Because this is a specific intent crime. And  
23 I said it in the beginning and I'm saying it now. What was  
24 going on in Mr. Nurick's mind, his intent, his intent, his  
25 intent.

1           And we know what his intent was because of what Lyly  
2    Nguyen said on the stand and the documents that were in her  
3    files and the evidence in this case, and, ladies and gentlemen,  
4    I want to make sure we all understand here, testimony is  
5    evidence. There is hundreds of documents here. That's  
6    evidence. There is also testimony, and that is evidence.

7           Mr. Nurick relied on his lawyer. He told her what his  
8    situation was. He sought her advice, and she gave it to him,  
9    and he followed it. No thank you anymore, Ms. Nguyen.

10          The government and Mr. Nurick see this case entirely  
11    different. Mr. Nurick's position, very straightforward: *My*  
12    *intent is to pay the taxes.* How do you know that intent?  
13    *Because of the steps I took.* When do you know Mr. Nurick went  
14    and contacted Lyly Nguyen? 1999. Not in 2000, not in 2001. In  
15    1999. And when I asked Ms. Nguyen was there any reason that you  
16    would meet with Mr. Nurick other than a business relationship,  
17    her answer was no. And you know the reason why he went there is  
18    to fix his taxes. That's his state of mind. That's the  
19    earliest point we have here as to what is going on in his mind  
20    back in 1999.

21          He hired her in 1999. Then he amended his returns in  
22    May of 2000. So summer of '99, I believe her testimony was, all  
23    the way true through the fall of 1999, and then by May he is  
24    filing his amended returns. And then the next thing he does --  
25    that's two steps, I would submit to you, of his intent. Two

1 steps: hiring a lawyer; filing amended returns. Third step is  
2 he files or executes a Power of Attorney. Why would he execute  
3 a Power of Attorney?

4 In November of 2000, Mr. Nurick testified, Ms. Nguyen  
5 testified for resolving the tax liability. He paid or he  
6 amended his return in May of 2000 so now he has got to figure  
7 out how to deal with the money that he owes. So what does he  
8 do? He executes a Power of Attorney. And let's put this in  
9 context. He is going back and forth to Costa Rica. He is  
10 thinking of retiring there, and so he says to his lawyer, *handle*  
11 *it*. November of 2000. Then he comes back in January of 2001 so  
12 now we have got the next time he makes a step to amend or to pay  
13 his taxes. He meets with Ms. Nguyen January 6th of 2001 in her  
14 office, and there he discovers the Power of Attorney that he had  
15 given her wasn't complete. He needed his wife's signature, and  
16 while he was there, they both executed the Installment  
17 Agreement. And so if you look --and you'll have these documents  
18 back there --and, ladies and gentlemen, I'm going to try to  
19 avoid showing you documents and talk to you because we've seen  
20 enough documents, and now it's time to understand what it means.  
21 But, please, take your time and go through all the documents in  
22 this case. Mr. Nurick is not afraid of these documents. They  
23 support what his position is.

24 So if look at the Installment Agreement and the Power  
25 of Attorney, you will see Mr. Nurick's signature in November of

1 2000 for the Power of Attorney agreement, Power of Attorney  
2 form. And then you will see underneath his signature, his  
3 wife's signature for January 6, 2001, where she forgot to sign  
4 or she didn't sign. And then in January, they both are still  
5 there, and that's when they execute the Installment Agreement.

6 What I told you in opening arguments was that in  
7 Mr. Nurick's mind, his tax matters, regardless of what's  
8 happening in the rest of his world, he's got a plan to pay over  
9 time.

10 And while I'm thinking about this, I want to mention  
11 this to you. Mr. Nurick did not get rid of his assets, all of  
12 his assets. He has Aztec Irrevocable Trust; had almost \$600,000  
13 in it. He didn't get rid of that. I will talk to you about  
14 that in a second, but that's not true. If he had gotten rid of  
15 all his assets, you wouldn't see Aztec on here.

16 So getting back to this, so there he is. He's on his  
17 way to Costa Rica. He signs an installment agreement request.  
18 He has hired his lawyer. He has paid her money. He has amended  
19 his returns. These are steps that show his intent. And it  
20 shows that he relied on his lawyer because his lawyer is telling  
21 him what to do. So then he calls -- he calls his lawyer from  
22 Costa Rica, and she says *have you made your good faith payment?*  
23 No, he hasn't. *I didn't know I had to. Well, you need to make*  
24 *it.* So what does he do in March? He makes a \$500 payment, the  
25 same amount that's on the Installment Agreement request.

1 Coincidence? Or is that really what happened? And the  
2 government doesn't want to talk about it.

3 Let me also show you how we know there was an  
4 Installment Agreement. And Ms. Nguyen, she messed up, ladies  
5 and gentlemen. I'm sorry. That's just the way it is. She gave  
6 bad advice, and she didn't do what she was supposed to do.

7 I'm going to show you this exhibit. This is Defense  
8 No. 4. It's also in the government's evidence. December 4,  
9 2000, that's when this document was in Ms. Nguyen's possession,  
10 at least at that date. She writes, and she later testified,  
11 that really she meant January 4, 2001. *IRS will make note to*  
12 *receive agreement by Friday, January 12, 2001.* There will be a  
13 calendar -- I have a defense exhibit in there that's a calendar  
14 that will show you Friday is January 12th, 2001. She means  
15 agreement, Installment Agreement. That's what that is. That  
16 shows you. It wasn't like the Installment Agreement just  
17 appeared out of thin air. I would suggest she is almost  
18 borderline incompetent where she's messing up the years and not  
19 filing stuff and giving bad advice.

20 So that is his intent: Hires a lawyer; amends his  
21 returns; signs a Power of Agreement; signs an Installment  
22 Agreement request; makes a \$500 payment. That is his intent.  
23 And you know that he relied on his lawyer because she told you  
24 that's what she told him to do.

25 The government -- ladies and gentlemen, I do submit

1 that it really is that simple. The government didn't have the  
2 Installment Agreement prior to this trial. Mr. Nurick, they've  
3 been after him for 11 years, ladies and gentlemen. He doesn't  
4 trust this government. Who knows? How would they turn that  
5 against him? The government has spent a considerable amount of  
6 time on what I would submit to you are distractions, red  
7 herrings, or irrelevant, like Denise Taylor-Fraser and Teresa  
8 Vogt.

9 They're determined to get Mr. Nurick. Over the past  
10 11 years, they've taken his life, looked under ever single rock,  
11 every single bank document, every single non-financial document,  
12 and they twisted it and contorted it to make you think, to try  
13 to tell a story that he had ulterior motives. He's a smart man,  
14 ladies and gentlemen, but he had this grand plan from 1995 to  
15 evade payment? All these things he did? It's a stretch. And  
16 sometimes when you look at the simplicity of it, it is just that  
17 simple. He had an agreement, and his lawyer didn't file it.

18 Mr. Nurick is an honorable man, ladies and gentlemen.  
19 There is no evidence in this trial to suggest otherwise. He  
20 took the stand and told you he is 76 years old. He has served  
21 his country in the Army. He has worked for the government in  
22 top military jobs. A married man with kids. And he's paid  
23 taxes every single year that he has worked in his adult life.  
24 You didn't hear any disagreements about that. He probably has  
25 paid taxes longer than most of us in this room, if not all of

1 us.

2 The idea that he would amend his taxes and then not  
3 pay them is counter-intuitive. It's Ms. Nguyen who abandoned my  
4 client. It's Ms. Nguyen who failed to do her job, and it's  
5 Ms. Nguyen who gave him bad advice.

6 Use your experience, ladies and gentlemen. Use your  
7 common sense. Put yourself in Mr. Nurick's position. Think  
8 about how if the IRS came after you and second-guessed every  
9 decision you made financially and then took it and created a  
10 different story than what your intention was, what would you do?  
11 Mr. Nurick got up and took the stand and told you what his  
12 intentions were. They asked him on cross-examination *why did*  
13 *you stop paying the \$500? Why did you stop paying?*

14 *I thought it was wrong. You're going to come after me*  
15 *when I tell you I owe a tax and I'm going to pay and now you're*  
16 *going to come after me?*

17 I'm going to get into the evidence a little bit more  
18 detailed, but before I get there, I want to talk about a couple  
19 of the legal principles, the pillars of our foundation here in  
20 the criminal justice system in the United States.

21 And the judge mentioned them briefly. She read the  
22 instructions, and you will have them back in the jury room with  
23 you. But, ladies and gentlemen, I said something to you in the  
24 very beginning -- I don't know if you remember, but I gave a  
25 little mini opening right here, and I said *Mr. Nurick will*



1    *prove*, and I kicked myself, and I've been kicking myself ever  
2    since I said that because Mr. Nurick doesn't have to prove  
3    anything. It's the government that has the burden of proof.  
4    Mr. Nurick could sit here quiet, not say a single thing. He  
5    didn't have to testify. He didn't have to call witnesses. It's  
6    the government that has the burden of proof, and it never  
7    shifts. It's the government that must prove to you beyond a  
8    reasonable doubt that Mr. Nurick's reliance on his counsel's  
9    advice was not in good faith. He has presented -- he has told  
10   you *I relied on my lawyer*, and she testified that yeah, that's  
11   the advice. It's the government's duty to come to you and prove  
12   beyond a reasonable doubt that that's not true.

13            Mr. Nurick is presumed innocent. This is a big  
14   government. This is the Department of Justice sitting in this  
15   courtroom today. If you can't understand anything in this case,  
16   if you're confused, if you wish a question had been asked from a  
17   witness, don't look at him. You look at the government. They  
18   have been waiting 11 years for this day. It's not Mr. Nurick's  
19   burden; it's the government, and it doesn't change.

20            So what is their burden? Their burden is they have to  
21   prove beyond a reasonable doubt. The highest standard we have  
22   here. It's always required, and it's not just *clear and*  
23   *convincing*. It's not *probably*. It's not *most likely*. It's  
24   *beyond a reasonable doubt*. Beyond a reasonable doubt, ladies  
25   and gentlemen. There is an instruction as to what that is that

1 you will read, but I submit to you in this case, they have not  
2 met their burden of proving their case beyond a reasonable  
3 doubt. If you have some doubt, Mr. Nurick is not guilty.

4 The three jury instructions that I want you to pay  
5 particular attention to -- they're all important, but three of  
6 them are particularly important. The first is the  
7 reliance-on-counsel defense. The second is what is an  
8 affirmative act. And the third is what is willful, when an  
9 affirmative act is willful, did Mr. Nurick act willfully.

10 Reliance of counsel. Two parts here. One is the  
11 Installment Agreement and the other is the Offer in Compromise.  
12 Mr. Nurick relied on his counsel when he amended his returns,  
13 which now Mr. Laffer tells us maybe he shouldn't have done that.  
14 He didn't have an obligation. The statute of limitations had  
15 lapsed. But yet Mr. Nurick listened to Ms. Nguyen. He amended  
16 his return, and then when he had the tax liability, he asked his  
17 lawyer *What do I do?* And she said, *You got three choices: pay*  
18 *it, Installment Agreement, or Offer in Compromise.* She advised  
19 him the Installment Agreement. She said that. So that's his  
20 first reliance-on-counsel defense. If you rely on your counsel,  
21 then there is no specific intent to commit a crime because it's  
22 your lawyer who is telling you. If you don't tell your lawyer  
23 something when you rely on counsel, yeah, that's a problem. But  
24 that's not what happened here. Ms. Nguyen knew what was going  
25 on. She knew about Aztec. She knew about Kevin Mirecki.

1           Let me just take a step out of this discussion to say  
2   when there's questions about Ansbacher and whether or not  
3   Ms. Nguyen knew about Ansbacher, that relates to the Offer in  
4   Compromise in April of 2001, not the Installment Agreement  
5   request. And you know Mr. Nurick in his mind didn't own  
6   Ansbacher in April of 2001. So whether or not he told  
7   Ms. Nguyen or not about Ansbacher at the time that the Offer in  
8   Compromise was filed is not relevant, because he didn't own it.

9           So getting back to the reliance on counsel, there's  
10   the Installment Agreement, he relied on his lawyer, and then  
11   there's the Offer in Compromise. The government has to prove  
12   beyond a reasonable doubt that he had the specific intent to  
13   evade payment of '95 taxes. And the law will tell you -- the  
14   law, not Mr. Lombard, not Mr. Nurick, not government counsel.  
15   The law tells you that so long as Mr. Nurick made full  
16   disclosure of the material facts -- material is important -- the  
17   ones that matter, as long as he did that to his lawyer and she  
18   gave him advice on that and he relied upon that advice in good  
19   faith, he's not guilty.

20           *Affirmative acts of evasion*, and there's a list of  
21   them. They will be in the instructions. But, ladies and  
22   gentlemen, me walking into this courtroom is an affirmative act  
23   to take a step forward. But just taking a step forward, there  
24   is nothing wrong with it unless I have the intent.

25           It's one thing to make -- to do affirmative acts, do

1 things. It's another thing to do it with the intent to evade  
2 payment, and that's what the government must prove beyond a  
3 reasonable doubt. That he took affirmative acts with the  
4 specific intent to not pay his '95 taxes. Look at Jay Lashlee.  
5 Mr. Lashlee -- it was his advice to Mr. Nurick to *create trusts*  
6 *for every piece of asset have you*. That was in '95 when  
7 government counsel asked him, *did you own this trust, did you*  
8 *own this trust, did you own this trust?* Those are old trusts.  
9 The question is was he creating those with the intent to evade  
10 his taxes? No. It's called asset protection. Would I do it or  
11 would you do it? It's a different story. But Mr. Nurick got  
12 advice from Mr. Lashlee. That's what he did.

13 Ladies and gentlemen, the second most important part  
14 about affirmative acts is that you always must agree with one,  
15 at least one of those affirmative acts. If you don't agree that  
16 there is a specific intent to evade payment of -- based on an  
17 affirmative act, if you disagree, he's not guilty. The  
18 government has taken a shotgun of pellets and thrown them out  
19 there. Ladies and gentlemen, that's not enough in this case.  
20 It has to rise to a much higher level.

21 The third is willfully. That he had a duty, that he  
22 had a tax to pay, and that he intentionally and voluntarily  
23 violated that duty. *I intentionally* -- or Mr. Nurick  
24 intentionally and voluntarily avoided payment. That's what the  
25 instruction of *willful* is. That's what has to be willful. So I

1 ask you to ask yourself when he went and hired Ms. Nguyen, what  
2 was his intention? I ask you to ask when he signed that  
3 Installment Agreement request, what was his intention? I ask,  
4 when he gave Power of Attorney to her and when he paid the \$500,  
5 what were his intentions? Was he just doing an act for the sake  
6 of doing it? Or did he have something in mind? I submit to you  
7 that he definitely had something in mind, pay his taxes.

8 So he didn't pay all at once. Is that a crime? In  
9 the United States, long ago, there used to be a debtor's prison,  
10 18th Century, where if you didn't pay your taxes, you went to  
11 jail. That's not the way it is anymore. You don't go to jail  
12 for not paying your taxes.

13 There is one other element of evasion of payment that  
14 I want to address, and that is there must be a tax due, and now  
15 after I -- we hear Mr. Laffer testify, there is a real question  
16 as to whether or not there is even a tax due. Mr. Laffer told  
17 you that based on his examination of the records and talking to  
18 Mr. Lashlee and hearing Mr. Nurick testify and all the documents  
19 that are in this case, he doesn't see anything to contradict  
20 that the IRA IB-Control Trust was not a valid rollover.

21 Mr. Nurick went to Ms. Nguyen ask said, *I think I got problems*  
22 *with my rollover.* He may never have had a problem to begin  
23 with.

24 So let's talk about the reliance-of-counsel defense a  
25 little bit more in depth. Ms. Nguyen was introduced to my

1 client in the summer of 1999. He came to her and said he had  
2 problems, he believed, with his rollover. She looked at it, and  
3 she said, *Okay, we need to file an amended return for '95, '96,*  
4 *'97.* What did he do? He filed amended returns for '95, '96,  
5 '97.

6 The government wants to tell you that Mr. Nurick knew  
7 about his taxes when he received the subpoena in 2000, but you  
8 know that's not true because Lyly Nguyen tells you *I met him in*  
9 *'99.* They also introduced Denise Taylor-Fraser and Teresa Vogt  
10 to say that he knew about the Genesis tax ability in a meeting  
11 in Costa Rica in the 2000. You know that's pure speculation  
12 because again Ms. Nguyen told you when she met him and why he  
13 was there.

14 So he files the amended returns, and what's he do? He  
15 goes back to her. He doesn't know it, but she's already  
16 possibly given him bad advice. She says, *You need to now file*  
17 *an Installment Agreement request,* so he listens to her. She  
18 fills out the form, just like she testified, and he signs a  
19 Power of Attorney, and she advised him that she would take care  
20 of it while he was gone to Costa Rica.

21 She doesn't do that. She can't do it because there is  
22 no full Power of Attorney for him. His wife didn't sign. He  
23 comes back, he finds out, *okay, you didn't file it, let's get it*  
24 *right, here are the signatures, there you go.* Ms. Nguyen, does  
25 she do it? No, she doesn't do it. Why doesn't she do it? I

1 would submit because she's a bad lawyer, that's why. She told  
2 my client to make a good faith payment of \$500 in March. You  
3 know she's talking to the IRS about it. There is another  
4 exhibit, Defense Exhibit 1006. It's dated January 15, 2001, and  
5 you look at her handwritten notes. That's supposed to be a  
6 2001. She is making mistakes of the year, and this man is under  
7 scrutiny of the IRS, and she can't even get the dates right.  
8 *Extension five weeks from today.* I submit to you the five-week  
9 extension is for her filing the installment request.

10 So then she calls Mr. Nurick and asks -- or he calls  
11 her, one or the other, *Why haven't you been making your good*  
12 *faith payment? Okay. I'll make my good faith payment.* Nothing  
13 there to indicate that Mr. Nurick should know that she hasn't  
14 filed the request. And, ladies and gentlemen, if you have any  
15 questions that you want to ask those witnesses that would make  
16 it more clear in your mind, you look to them. Mr. Nurick took  
17 the stand, and I'm going to talk to you about Luna de Los  
18 Crestones in a second, but if you want to know where is the  
19 contract, Mr. Nurick got up there and testified, *I sold an*  
20 *interest to Andre Tinoco, Luna de Los Crestones.* The government  
21 had the opportunity to cross-examine him on those issues, find  
22 out more about it, but they didn't. So now you know his  
23 testimony is evidence, and it's uncontradicted, and you have to  
24 accept that. You can weigh his credibility, but that's the  
25 evidence.

1 Ms. Nguyen took the stand. You want to know why she  
2 didn't file that? I asked her. She said, *I don't know if I*  
3 *filed it. I don't recall.* Incompetent is what I suggest. But  
4 if you want questions asked of those witnesses that weren't  
5 asked, it's their burden, it's their job, and if they didn't ask  
6 it, I'll tell you why; it would have helped Mr. Nurick.

7 So Mr. Nurick -- I submit to you his intent has been  
8 established when he executes these documents. Several steps  
9 he's taken, and I won't repeat them again because I think we've  
10 belabored the issue, but certainly he had an Installment  
11 Agreement request in his mind on track, whether you call it  
12 *filed, going to be filed, in the process, down the line,* that's  
13 what was happening based on the documents. And all based on the  
14 advice of his lawyer. And I submit to you that there is no  
15 contradiction of those facts. Those are the facts, and they're  
16 not -- but they're documents and they're untested, and that  
17 alone, ladies and gentlemen, tells you Mr. Nurick is not guilty.  
18 No one came in here and said the Installment Agreement was  
19 false. No one says his lawyer didn't advise him to do that.

20 Yet despite helping out enough with Mr. Nurick's tax  
21 problems, Lyly Nguyen, once again, volunteers to help him more.  
22 She says *we should file an installment* -- I mean, an Offer in  
23 Compromise while the Installment Agreement is pending. Great  
24 advice, Ms. Nguyen. Mr. Laffer tells you there's no way that he  
25 would qualify for an Offer in Compromise. But yet Ms. Nguyen --



1 let me -- Mr. Nurick, no education when it comes to taxes. He  
2 may be a smart man, ladies and gentlemen, but use your common  
3 sense. There are lots of smart people we know in our lives,  
4 probably most of you -- I say *probably*, I know most of you are  
5 smart, but does that make you an expert in some other area? I  
6 am a criminal defense lawyer. Does that mean I know about fluid  
7 dynamics? The government wants you to attribute my knowledge as  
8 a criminal defense lawyer now to fluid dynamics. That is what  
9 they are asking you. He is an engineer. We're going to hold  
10 him to the standard of Lyly Nguyen who went to law school and  
11 has an LLM, an advanced degree, in taxes. That's the kind of  
12 standard we're going to put on him. Is that right? No, that's  
13 not right. That's why he hired her. That's why he paid her  
14 money. She's an expert.

15 Mr. Nurick testified he was reluctant. We have an  
16 installment request; why would we need an Offer in Compromise?  
17 Uncontradicted. She advised him, and she tells you, *I advised*  
18 *him*, and you know Ms. Nguyen is telling the truth. She was  
19 afraid to talk to me. She has her own lawyer. She filled out  
20 the Offer in Compromise, and I just want to submit to you,  
21 ladies and gentlemen, that my argument to you is that his intent  
22 has already been proven to you.

23 What happened in the Offer in Compromise, what  
24 happened at Shaver Lake, what happened with John Biber and  
25 Ansbacher are irrelevant. I mean, they may be peripherally --

1 peripherally, way out in the boundary, some indicia of what was  
2 going on in his life, but what came first and what sets  
3 precedent to his intent is the installment request, so this  
4 Offer in Compromise is something that confuses the issue, in my  
5 opinion, and what I submit to you, it does because he already  
6 has something. He has already taken care of his taxes.

7 Now, who fills out the Offer in Compromise? She does.  
8 He's in Costa Rica. She faxes it down to him. He tells you  
9 that *I'll sign it but don't submit it until I get back because I*  
10 *want to review it.*

11 Lyly Nguyen is familiar with Mr. Nurick's tax issues.  
12 This was in April of 2000 -- January, February -- April 19,  
13 2001, the Offer in Compromise is submitted. She has known him  
14 now since summer of '99. She's introduced him to Tony Lam,  
15 whose office is in her office, essentially. She pays -- he pays  
16 Lyly Nguyen who pays Tony Lam. Tony Lam essentially works for  
17 her. She oversees what he does.

18 Tony Lam filed his 2000/2001 taxes. His Aztec  
19 Irrevocable Trust is on his taxes. The idea that she didn't  
20 know what his status is is just not credible. She knows what  
21 Nurick Associates is. She knows his bank accounts. What is she  
22 doing in his life. She's helping with his taxes. And she knows  
23 about Aztec. And how do you know she knows about Aztec?  
24 Because she told us: *Mr. Nurick had too many uncertainties so I*  
25 *advised him to check no.*

1 Ladies and gentlemen, forbid the day when you go to a  
2 lawyer and you tell them you're confused and they give you wrong  
3 advice and then you get criminally prosecuted for it. It was  
4 her advice to check *no*. It wasn't his. He relied on her. That  
5 is not guilty of his -- I should say that shows that he didn't  
6 have that specific intent, which means he's not guilty.

7 Mr. Nurick said he faxed the form from Costa Rica.  
8 This was in 19 -- this was in 2001. We're in 2011 here, ladies  
9 and gentlemen. Look at the signature page on that document.  
10 Use your common sense. Mr. Nurick, I would submit to you, is  
11 right. The faxes weren't that legible back then. Look at that  
12 signature page, and you understand why Mr. Nurick said *wait*  
13 *until I get back to review this whole document* because she faxed  
14 everything to him. It wasn't like he was in her office filling  
15 out the Offer in Compromise and going over it. It's all round  
16 numbers. And, ladies and gentlemen, you -- before I get there.  
17 I'm getting ahead of myself.

18 So he filed the Offer in Compromise at her advice  
19 based on his discussion with her, and at this point, no reason  
20 not to trust her. That's the reliance-on-counsel defense, part  
21 2.

22 Now, I have to address all of this because the  
23 government has alleged the shotgun approach of intent, but my  
24 main point is the installment request. But I'm going to address  
25 each of them and, certainly with the Offer in Compromise, he

1     relied on his lawyer. And the evidence corroborates that. She  
2     corroborates that.

3             Lyly Nguyen played it fast and loose. She is now, I'd  
4     submit to you, probably much more careful. But she played it  
5     fast and loose. *Oh, just fill it out here, sign it. We'll have*  
6     *a chance to correct it when it's actually assigned to an agent.*  
7     And you know that's the process because Mr. Laffer told you, she  
8     told you, and her experience, when you file an Offer in  
9     Compromise, yeah, it's an offer, and it might not work, and once  
10    it gets to a revenue officer, then you get an opportunity to  
11    correct it.

12            Oh, so when Mr. Nurick told Ms. Nguyen that *I forgot*  
13    *my truck*, what happens? The hatchet comes down. Nope. That's  
14    indicia of your evasion of payment. That's what the government  
15    tells Mr. Nurick. Mr. Nurick goes to his lawyer. Imagine that,  
16    ladies and gentlemen, you're sitting with your lawyer and you  
17    say, *I made a mistake and I need to correct it.* Your lawyer  
18    says, *Just wait, just wait a bit. We'll have a chance to*  
19    *correct that.*

20            Okay. *I'll rely on my lawyer. She's a lawyer. She*  
21    *has an LLM in tax. She is a specialist in this area. I'm*  
22    *paying her. She's led me through this maze that I -- from 1995,*  
23    and then right when you think it's going to happen, all of a  
24    sudden the government says, *No, you don't get a chance to do*  
25    *that. You don't get a chance to correct it. In fact, we're*

1     *going to use it against you. What a slap in the face that is.*  
2     By Ms. Nguyen, by Mr. Nurick and his intentions. She played it  
3     fast and loose, and Mr. Nurick is paying the consequences as we  
4     sit here today.

5             She advised him about Aztec. And you know in 2000,  
6     2001, Aztec -- Aztec is a Genesis investment where it goes, and  
7     2000, 2001, Kevin Mirecki was the trustee. It was Kevin  
8     Mirecki's responsibility to identify. Mr. Pastor told you that.  
9     It was his responsibility to identify Aztec, and then when  
10    Mr. Pastor said, *No, Mirecki doesn't know what he's doing,*  
11    Mr. Nurick gave that responsibility to Ms. Nguyen, and that's  
12    when you see Tax Law Services, ITF, I think, *in trust for, Aztec*  
13    Irrevocable Trust.

14            So he took it from Kevin Mirecki, who Mr. Pastor said  
15    he doesn't know what he's doing, and he gave it to Ms. Nguyen  
16    because he still trusted her and she knew what she was doing.

17            THE COURT: Mr. Lombard, could you slow down a little  
18    bit?

19            MR. LOMBARD: Yes, I am sorry. I apologize. I get  
20    excited sometimes, even though it's a tax case.

21            Once Mr. Nurick realized that he was getting C-team  
22    advice, he went to Mr. Pastor, Harvard Law School, Assistant  
23    United States Attorney, Assistant Chief of the Criminal Division  
24    of Tax, and he got some A advice, A-team advice, but by then,  
25    ladies and gentlemen, it was too late.

1           And what does the C-team lawyer do when it's based on  
2 her advice that he gets indicted? She says, *I'm not talking to*  
3 *you.* I'd submit to you -- to me, to Mr. Laffer. I'd submit to  
4 you that's further indicia of her incompetence.

5           Now, the government specifically -- they allege  
6 specifically five things that I've kind of touched on that  
7 Mr. Nurick did to evade payment. The first thing is to create  
8 and use Luna de Los Crestones as a corporation and the bank  
9 account associated with it. The second was the use of the  
10 Ansbacher money to give to John Biber. The third was  
11 withdrawing equity. Fourth was filing the Offer in Compromise  
12 as doubt to collectability, and the fifth is the 433-A, which,  
13 ladies and gentlemen, I submit is the same thing as the Offer in  
14 Compromise, but in the 433-A, they say he didn't include as  
15 assets a truck, Aztec, and Luna de Los Crestones. Those are the  
16 specific acts they're alleging, that he took affirmative acts  
17 that they have to prove beyond a reasonable doubt, that he  
18 willfully evaded payment. So let's talk about Luna de Los  
19 Crestones.

20           Where, where, where is the evidence of incorporation,  
21 the corporate documents that show us that Mr. Nurick owned Luna  
22 de Los Crestones? I've told you it's their burden. They showed  
23 you a credit card, some minutes. There is no articles of  
24 incorporation, there's no bylaws, none of the documents that  
25 would indicate that this man owned that company.

1           Mr. Laffer told you just because you see money going  
2     from one account to the other is not indicia of ownership.  
3     Ladies and gentlemen, the United States is sitting right here at  
4     this table. They could have brought you an expert on Luna de  
5     Los Crestones -- on corporations and told you what is necessary  
6     to form a corporation. They could have told you -- they could  
7     have brought you Andre Tinoco, whose name and official signature  
8     is on the back page of the documents that mention my client's  
9     name. Where is he? If you have questions about that and they  
10    want you to believe that he owned that and he tells you he  
11    didn't, then that's evidence. And you want something more firm  
12    than that. You look to them; you don't look to Mr. Nurick.  
13    It's their burden. And I'll submit to you the reason you don't  
14    see corporate documents, bylaws, shareholders minutes, is  
15    because he doesn't own it, and they don't want to prove it to  
16    you because they can't.

17           Mr. Nurick got up here -- he didn't have to get up --  
18    and he took the stand and he told you he was available for you,  
19    ladies and gentlemen. To whatever the government wanted to ask  
20    him about his actions, he was available. And not until  
21    Mr. Laffer got up here on the stand did they decide to question  
22    contracts, documents. Why didn't they ask Mr. Nurick those  
23    questions? I'll tell you why. Because they knew that  
24    Mr. Nurick had sold his interest to Mr. Tinoco at Luna de Los  
25    Crestones. And if you wanted the government to ask those

1 questions and you didn't get those answers, then you hold it  
2 against the government because they know what their job is.  
3 This is not their first rodeo.

4           And, ladies and gentlemen, government counsel makes a  
5 big deal of why sell if he's making such great returns? I'll  
6 tell you why. Mr. Nurick told you why. *I owe taxes all of a*  
7 *sudden on three years.* So why did he sell his interest? Look  
8 at the charts. He sold his interest because now he had not just  
9 '95 because he treated '95 as a rollover, he had '96 as a  
10 rollover and '97, and he owed taxes and he needed money. So,  
11 yeah, he sold his interest. And he didn't sell all of it, and  
12 he still had \$600,000. You think Mr. Nurick would want to go  
13 through the -- what he's gone through over 11 years? Yeah, it  
14 would be a lot easier just to write a check had he known this,  
15 had he known Lyly Nguyen was going to fail him.

16           I don't begrudge the government so much because, like  
17 I said, they didn't know about the installment request so all  
18 they see in their tax summary is a \$500 payment. That's a  
19 little insulting if you don't know what his plans are. But  
20 that's not what happened. That's why he's not guilty.

21           Regarding Luna de Los Crestones, government counsel  
22 asked Mr. Nurick whether or not he opened an account in Belize.  
23 Why didn't they ask Mr. Nurick those questions? Why are they  
24 now waiting for Mr. Laffer get up when it's this man who did  
25 what he did. It's this man who has the answers. It's this man



1 who has made himself available to you, ladies and gentlemen, to  
2 answer their questions so he can show you that he's not guilty.  
3 So he can show you he did not intend -- or he did intend to pay  
4 his taxes.

5           The government argues he had full control over Luna de  
6 Los Crestones. The question I asked Mr. Laffer at the very end  
7 was when Mr. Nurick sends a request to Andre Tinoco to pay him  
8 for something, it's Mr. Tinoco who makes the decision of what  
9 account to pay him out of. It would be nice if we had a piece  
10 of evidence that said *Mr. Tinoco* -- from Mr. Nurick, *Dear*  
11 *Mr. Tinoco, please pay me or my things I want to pay, cabinets*  
12 *or car or whatever, on this account.* Then we've got some idea  
13 of Mr. Nurick's controlling Luna de Los Crestones. But all we  
14 have here is Mr. Tinoco's request to the bank to pay Mr. Nurick.  
15 So Mr. Tinoco is making a decision of where he is going pay it,  
16 which makes sense because Mr. Nurick sold him his interest.

17           So where is the money going to come from? It's going  
18 to come from Tinoco. Mr. Nurick has accounted for his money in  
19 this case. He has paid his taxes in this case. He made a lot  
20 of money over this investment. And I would submit to you he  
21 would probably give it all back not to have this experience  
22 again, but this is the man who made \$200,000, the most, in his  
23 career. He went from 19 -- when he retired all of a sudden  
24 making this money in this investment, he's over his head. He's  
25 almost a salaried employee for most of his career. He did some

1 part-time consulting, but not this kind of money. This is a  
2 different world for him. So he relies on experts, people who  
3 are used to dealing with people with lots of money. Don't let  
4 the government mislead you that he's some big high-roller. And  
5 he paid his taxes on his investments. That Mr. Laffer  
6 established.

7           Whether he got money from a check, whether he wired  
8 money or he sent it, there is a record of it. It wasn't like he  
9 went and made a personal withdrawal, and you saw a bank  
10 statement that said \$25,000 taken out. No. You see every check  
11 has a memo to his wife, a bank account. This man kept records.  
12 That's not the act of someone who is wanting to intend to evade  
13 payment.

14           So let's focus on NG Enterprises and the money that  
15 was sent to Mr. Biber. I will argue again that this is again  
16 irrelevant because we know that in November of 2000 he had a  
17 Power of Attorney for Installment Agreement requests. We know  
18 in 1999 he met Lyly Nguyen and had plans to deal with his tax  
19 issues. And you know that in November of 2000, Mr. Biber  
20 testified, that was when he talked to Mr. Nurick about this  
21 charity. Mr. Nurick is a principle man. There're not a lot of  
22 us left, but there's a principle. He committed and he said it.  
23 He didn't force Mr. Biber to give him his account number. And  
24 you have to think about it, what's going on back then? Back  
25 then in November of 2000, Mr. Nurick is sitting on a lot of

1 money, more money than he'd ever seen in his life. So giving a  
2 hundred thousand dollars to a charity with a friend wasn't the  
3 kind of thing that would make him give pause like it would  
4 today.

5 So the idea -- and Mr. Biber tells you, and it's not  
6 contradicted, there's no reason to doubt Mr. Biber's testimony.  
7 He came in and testified against his friend. *Yeah, we had this*  
8 *conversation in November of 2000.* So there's a conversation. *I*  
9 *want to give this money. I have it here. I'm making plenty of*  
10 *money. I would like to surprise my wife. You like animals.*  
11 *You agree to contribute. We'll create a charity. I have a plan*  
12 *here of my Installment Agreement. I'm going to pay my taxes.*  
13 *I'm making great money on my investments.* So really, in  
14 Mr. Nurick's mind, giving the money to Mr. Biber has no bearing  
15 on his intent, not until the government comes back and turns his  
16 life upside down and shakes him and then tries to connect all  
17 these random acts to make it sound like he intended to evade.  
18 That's the only time he realized he had to deal with this issue.

19 Talk about the withdrawal of equity. I would submit  
20 another smokescreen. Again, Mr. Biber told you *November of*  
21 *2000, that's when we had that discussion.* And, again, ladies  
22 and gentlemen, go back to what was going on in Mr. Nurick's  
23 life. He's getting ready to move to Costa Rica. He's handling  
24 his affairs. That's why he wrote -- he tells you *I wrote all*  
25 *those checks in one day. I'm getting out of here. I am going*

1 to live down here. I am preparing to move my family, my wife to  
2 Costa Rica. What does he do? He goes back and forth,  
3 investigates where he wants to live. And so he needs cash. And  
4 why take cash out of his principal, his investment that's making  
5 the great return? It's not a sham transaction. It's not an  
6 attempt to evade payment. Mr. Biber did his due diligence.  
7 Mr. Biber is not giving anybody any money, I don't care how rich  
8 he is. You saw what he did. He had his daughter look the APN  
9 number up. He had the CPA of his business research it. He had  
10 a promissory note. He had a second deed of trust. Mr. Biber is  
11 not giving -- that's -- giving money away. That's how he stayed  
12 so rich; millions, Mr. Nurick told you. He's not going to put  
13 his neck on the line for this man. That's not what happened.  
14 And what Mr. Biber testified to is evidence. And if the  
15 government wants you to think otherwise, then they need to  
16 cross-examine him on what he said to make you question his  
17 credibility. If they don't do it, then there is no credibility  
18 at issue. You are certainly free to observe him and his  
19 demeanor and how he answers questions. But they didn't do that.  
20 They didn't cross-examine him or redirect to make you question  
21 that this man was being used by my client. The reason they  
22 didn't do it was because there was Installment Agreement, and  
23 there was no misuse of that relationship by my client.

24 And, ladies and gentlemen, why didn't they ask  
25 Mr. Biber when he was on the stand? *Was the money just parked*

1    there? I mean, this is the assertion. My client parked the  
2    money in Mr. Biber's account. That's what -- that's the  
3    assertion. Then why not ask Mr. Biber *was the money just parked*  
4    *there to avoid payment on Mr. Nurick's tax liabilities?* Was  
5    that question asked? Your memory serves better than mine, but  
6    my memory doesn't, and the reason why it wasn't asked is because  
7    that's not what happened.

8               So I have talked to you about Luna, Ansbacher, and  
9    Shaver Lake. And now I'm going to the Offer in Compromise, and  
10   there's four parts in the Offer in Compromise. There is the  
11   doubt of collectability, the truck, the Aztec, and Luna. I will  
12   be short because I have talked about all of them already, just  
13   about.

14              But as to doubt to collectability, that was  
15   Ms. Nguyen's decision. That was her decision to file the Offer  
16   in Compromise. She has no motive to mislead you. She has every  
17   reason to want to protect herself. But she's also under the  
18   penalty of perjury in this federal courthouse, and she will tell  
19   the truth to you, and she did, and she told you that it was her  
20   decision to advise him to file the Offer in Compromise. With  
21   the 433-A form, ladies and gentlemen, we know Mr. Nurick told  
22   you, Ms. Nguyen told you that he said *I forgot the truck*. Now  
23   it's being used against him, even though she tells you, *Let's*  
24   *not fix it. Let's wait*. We know she knew about Aztec, and  
25   there is too many uncertainties, and she advised him to check

1 no. The question is for the defense of reliance of counsel, did  
2 she know? And she knew. She told you she knew because she said  
3 he was confused about his status.

4 So, ladies and gentlemen, Bill Nurick testified, and I  
5 submit to you that he was credible, and he is credible. He told  
6 you that he thought an Installment Agreement request was filed.  
7 There is no evidence before you that would suggest that he has a  
8 motive to not pay the government based on a tax policy, a  
9 philosophical or ideological reason. You have to consider that  
10 evidence or the lack thereof as to how it goes to his intent.

11 You have to consider when evaluating his intent, his  
12 history of being a taxpayer. You have to consider that all the  
13 transactions he took place in were recorded and opened and filed  
14 and -- reflected on his taxes as to his intent. You have to  
15 consider his character when deciding his intent. He never made  
16 a lot money. He was clearly over his head. The government says  
17 this is a world tour of money. Ladies and gentlemen, Genesis,  
18 if you recall, has a Forex trading investment program. Forex is  
19 all over the world. That's what it is. Don't be distracted by  
20 the slight of hand about the use of the words. Regardless of  
21 where the money went, he could have written checks to the moon.  
22 The question is what was his intent.

23 He went from the frying pan to the skillet with bad  
24 advice, ladies and gentlemen, but he is a principled man. He  
25 told you he was a principled man, and he stands up for what he

1 believes in. He did stand up and raise his hand and said *I owe*  
2 *taxes.* He did hire a lawyer. But he won't be pushed around.  
3 That much is clear, ladies and gentlemen. He won't be pushed  
4 around by the Department of Justice, and he won't sacrifice his  
5 beliefs for what he believes is right, especially when he didn't  
6 do what they say he did, especially when he was misled and given  
7 bad advice by a lawyer and now he's expected to pay. Imagine  
8 that. That you go to do the Offer in Compromise, the government  
9 then tells you you are now going to be indicted for evasion of  
10 tax payment -- evasion of payment of your taxes, and you look in  
11 the Indictment, and of the things you are charged with for  
12 evasion is the fact that your lawyer told you something, and  
13 then to add insult to injury, the lawyer told you *wait, we will*  
14 *correct it.* The government intervenes, and at that point they  
15 say, *We know that you could have corrected this, but we're going*  
16 *to stop this process right now and we're going to use your*  
17 *statement and your Offer in Compromise as further indicia of*  
18 *your intent and not allow you to correct that.* Imagine the  
19 feeling that that feels like for Mr. Nurick.

20 She neglected to file. Mr. Nurick lost his retirement  
21 account. He still owes taxes. And to boot, he is being  
22 prosecuted for evasion of payment. You, ladies and gentlemen,  
23 can stop this nightmare of Mr. Nurick's.

24 Now, we chose each and every one of you through the  
25 jury selection process because we believed that you would take

1 your responsibilities seriously, you would follow the law and  
2 listen closely to the evidence in this case. Be deliberate.  
3 Use your common sense. You can weigh your evidence. You don't  
4 all have to agree.

5           When I sit down, the government is going to have one  
6 last opportunity to speak to you. Like I mentioned before, it's  
7 their burden so they have that one more chance to talk to you.  
8 But, ladies and gentlemen, they have the last word in this  
9 courtroom. But you have the last word on this case. You be my  
10 voice, you be Mr. Nurick's voice. When you get back to that  
11 jury room, you think what I would say. You think what  
12 Mr. Nurick would say. Think what you would say. Don't be  
13 pushed around by one person or the other. All of your beliefs  
14 are critical to your deliberations. If you want to stand up for  
15 what you believe in, then you do that. If someone persuades you  
16 otherwise, that's your choice. But don't be pushed around.  
17 Because that's not I would want and certainly not what  
18 Mr. Nurick would want. You give this man his life back. He has  
19 been spending the last 11 years of what should be his golden  
20 years waiting for this day in court, fighting for what he  
21 believes in. And I submit to you what the evidence supports,  
22 what the truth supports is that he always had an intent to pay  
23 his taxes, and that's indicated through the Installment  
24 Agreement.

25           Making a mistake is not a crime. But indicting



1 Mr. Nurick for making a mistake is. A not-guilty verdict is the  
2 only verdict in this case, and I submit to you that that's what  
3 Mr. Nurick deserves under the law. Thank you.

4 THE COURT: Ms. Hendrickson, so we don't interrupt  
5 you, I think we will take our break first.

6 Ladies and gentlemen, don't talk about the case or  
7 form or express any opinions about the case until it's finally  
8 submitted to you. We will take a 15 minute break.

9 (Recess taken)

10 (Jury In)

11 THE COURT: Everyone is present.

12 Ms. Hendrickson.

13 MS. HENDRICKSON: Thank you, your Honor.

14 *Government's Closing Argument*

15 MS. HENDRICKSON: There are a few things that the  
16 government and defense do agree on. One, Mr. Nurick is not here  
17 for any kind of mistake. Mr. Nurick is not here based on bad  
18 advice from legal counsel. Mr. Nurick is here based on acts he  
19 did deliberately.

20 As defense counsel reminded you and the judge read to  
21 you, you can only rely on counsel if you fully disclose. Full  
22 disclosure is the only way an attorney can give accurate and  
23 complete advice. There is no question that Mr. Nurick did not  
24 disclose his interest in Luna de Los Crestones. He says he  
25 didn't have one.

1           He had an interest in Luna de Los Crestones and  
2 continued to collect money from Genesis, his 36 percent a year,  
3 '99, 2000, 2001. Tony Lam didn't know about it, Lyly Nguyen  
4 didn't know about it.

5           If we could pull up our first slide talking about  
6 deliberate actions. In the space of five days, Ms. Grochowski  
7 goes to the bank and takes out \$38,000. February 15, 2001,  
8 \$20,000; February 20, 2001, \$18,000. You can be sure Lyly  
9 Nguyen did not tell him to go withdraw a bunch of money out of  
10 the bank account *so you can hide it from the IRS*. She most  
11 certainly did not give him that advice. He took the cash out in  
12 anticipation of filing the Offer in Compromise.

13           2001, the government was able to trace over \$230,000  
14 to Mr. Nurick, and again the Offer in Compromise is filed right  
15 before here. So he doesn't even tell Ms. Nguyen that he got  
16 money in January of 2001, whether it's regarding the Installment  
17 Agreement or the Offer in Compromise. She doesn't know he is  
18 still collecting money. What I'm going to show you, in the  
19 Offer in Compromise it says *This is a final disposition. The*  
20 *money I reported from Genesis in 2000 is done. I am getting no*  
21 *more money*. That was not true.

22           On his 2001 1040, he only reports \$11,646, and it's  
23 listed on *other income*, Aztec Irrevocable Trust. His total  
24 income is listed as 28,000.

25           Now, Mr. Nurick is not on trial for filing a false

1 2001 income tax return. But it's relevant to you understanding  
2 what his intent was. What did he do on other tax returns? What  
3 other actions did he take? Were they consistent with him trying  
4 to hide information and assets from the IRS. The government  
5 submits this is indication of Mr. Nurick's willfulness in  
6 evading his 1995 income taxes.

7           The Offer in Compromise. Let's go over that.  
8 Mr. Nurick claimed he had one bank account that had a thousand  
9 dollars in it. In the first part of my closing when I stood up  
10 to speak with you, I showed that you wasn't true. There was at  
11 least \$5,000 in it. These are not just rough estimates.  
12 Ms. Nguyen talked to him. They exchanged faxes. She faxed him  
13 the entire 13 pages and said, *Look at all of this. Make sure it*  
14 *is right.* Then he signed it and sent it back to her.

15           The next page, *assets and liabilities.* We talked  
16 about the equity in Shaver Lake. Now it's down to \$10,000 after  
17 that deed of trust from Mr. Biber. Monthly payments, \$1,600.  
18 Well, if Mr. Nurick was actually making payments on the  
19 \$140,000, perhaps his expenses would have been 1,600. There's  
20 no evidence of that. Recall that that deed of trust was paid  
21 back November of 2001 when that house was sold. Mr. Nurick was  
22 making no principal payments. Now, I'll show you in a little  
23 bit his mortgage payments to Bank of America were only \$776.  
24 This is a deliberate overstatement of his expenses.

25           Now here this was discussed with Mr. Nurick on

1 cross-examination that he only had a net of \$18 a month, which  
2 he couldn't even live on, let alone pay the IRS even \$500 a  
3 month. He never had any intention of paying them \$500 a month  
4 under an Installment Agreement or under an agreement with the  
5 Offer in Compromise. He was trying to show that he had very  
6 little money so the IRS would accept \$10,000 for a \$157,000  
7 liability.

8 Let's look at the part down here on the bottom.

9 It says 2000 tax return. Line 33 shows \$348,562.  
10 This amount comprised of \$317,114 capital gain from passive  
11 investment and \$31,449 ordinary income. The capital gain was a  
12 final disposition.

13 Now, Ms. Nguyen was asked questions by Mr. Lombard  
14 whether that was his wording or hers. And her answer was that  
15 based on the information he provided to her, this was her  
16 understanding of what was going on with Genesis. He was not  
17 getting any more money.

18 It further says, *I already used this money to pay*  
19 *taxes and personal debts. My only source of income in the*  
20 *future are Social Security, pension, and consulting service.*  
21 Here is the signature, Mr. Nurick, Ms. Grochowski, dated 4/19.  
22 Now, again, I tell you, use your common sense. If you have  
23 drafts of documents going back and forth and you don't want to  
24 file something until you are back in the United States, you do  
25 not sign it. He signed it and sent it back to Ms. Nguyen. He

1 signed it under penalties of perjury saying it was accurate,  
2 accurately reflected his income, his expenses and his assets.

3 Here are some of the checks to Bank of America in 2000  
4 that show -- they are for \$776.13. This is the one mortgage  
5 payment he was making regular payments on. Not 1600; 700.

6 On the other part of the Offer in Compromise there  
7 also is a collection information statement for his business,  
8 Nurick & Associates, Inc. The asset he lists down there is the  
9 one checking account at Wells Fargo Bank, a thousand dollars. I  
10 just showed you those statements showed the balance was \$7,000,  
11 not a thousand dollars. And when you're offering to pay the IRS  
12 only \$10,000, it matters a lot to them whether you have a  
13 thousand or five thousand, a thousand or seven thousand.

14 The number of pages, 13. All of the documents were  
15 faxed to Mr. Nurick, not just the signature page. He had the  
16 time and the opportunity to review it all and sign it. The  
17 balances as of the Offer in Compromise, again, Luna de Los  
18 Crestones, was not disclosed to Lyly Nguyen. It was not  
19 disclosed. If he did not disclose every asset he owned and he  
20 controlled, he cannot rely on her advice because she can't give  
21 him accurate advice. He hid that account from her because he  
22 didn't want her to know about it and because he didn't want the  
23 IRS to know about it.

24 2001 his total income, the whole year for 2001, for he  
25 and his wife, \$28,385. Now, I just showed you those cash

1 withdrawals from February. Those totaled \$38,000. So  
2 Ms. Grochowski took out of the bank in cash \$38,000 in one week  
3 in February of 2001, more than he reported as income for the  
4 entire year. Does that make sense? No. What makes sense is he  
5 had all the money from Luna de Los Crestones that we showed you  
6 on the chart. He was still getting money from Genesis. He was  
7 still controlling it. He did not report it. He had already  
8 told the IRS *I don't have any money*. This tax return he files  
9 to be consistent with that.

10 If you take his itemized deductions and his personal  
11 exemptions, taxable income, zero, nothing, for 2001. Again,  
12 contrast that with the chart we provided to you, he received  
13 over \$230,000 in 2001 from Genesis.

14 There has been some discussion today about I-Control  
15 NB Trust, and Mr. Laffer, I believe, said there was no evidence  
16 inconsistent with it being a retirement account. The trust did  
17 not have an EIN or a taxpayer identification number. When the  
18 IRS tried to look up I-Control NB Trust in their system, they  
19 found nothing. When they looked up tax returns, down here at  
20 the bottom, it shows nothing is on file for I-Control NB Trust  
21 for the years '95 through 2002. Why? Because that was just a  
22 name on a bank account. Mr. Nurick received Genesis funds into  
23 that account at Wells Fargo Bank, '95, '96, '98, '99. It's not  
24 a trust. It was an individual checking account.

25 One other thing we do agree with defense counsel about

1 is that Mr. Nurick is here based on his actions, not based on  
2 any mistakes, but the other issue counsel talked to you about  
3 was he's been waiting 11 years, and he's been waiting a long  
4 time for this. Now, the progress of the justice system is  
5 something beyond your control, my control. The issue is what is  
6 he on trial for, what are the facts? Mr. Lombard said  
7 Mr. Nurick was an honorable man. We're not saying he's a  
8 horrible person. We are saying he took deliberate steps and  
9 committed a crime. That's what the evidence supports. That's  
10 what the evidence shows.

11 In 1904, Associate Justice Oliver Wendell Holmes said  
12 *Taxes are what we pay for a civilized society.* Our system  
13 depends on people filing and paying. The government does not  
14 have enough resources to chase people down and to audit them and  
15 to do criminal investigations. But when we find evidence of  
16 fraud, that somebody is intentionally evading the payment of  
17 taxes, then it is the government's duty on behalf of all  
18 taxpayers to come to you in a forum like this and say Mr. Nurick  
19 committed a crime. The evidence shows he committed a crime.  
20 And on your review of the evidence, you will see he acted  
21 deliberately. You will unanimously agree that he committed  
22 evasion of payment for 1995, and you will find him guilty.

23 THE COURT: When you begin your deliberations, elect  
24 one member of the jury as your foreperson, who will preside over  
25 the deliberations and speak for you here in court. You will

1 then discuss the case with your fellow jurors to reach  
2 agreement, if you can do so. Your verdict, whether guilty or  
3 not guilty, must be unanimous.

4 Each of you must decide the case for yourself, but you  
5 should do so only after you have considered all the evidence,  
6 discussed it fully with the other jurors, and listened to  
7 their -- to the views of your fellow jurors. Do not be afraid  
8 to change your opinion if the discussion persuades you that you  
9 should, but do not come to a decision simply because other  
10 jurors think it is right.

11 It's important that you attempt to reach a unanimous  
12 verdict but, of course, only if each of you can do so after  
13 having made your own conscientious decision. Do not change an  
14 honest belief about the weight and effect of the evidence simply  
15 to reach a verdict.

16 Because you must base your verdict only on the  
17 evidence received in the case and on these instructions, I  
18 remind you that you must not be exposed to any other information  
19 about the case or to the issues it involves. Except for  
20 discussing the case with your fellow jurors during your  
21 deliberation, do not communicate with anyone in any way and do  
22 not let anyone else communicate with you in any way about the  
23 merits of the case or anything to do with it. This includes  
24 discussing the case in person and in writing, by phone or  
25 electronic means via e-mail, text messaging or any Internet chat



1 room, blog, website or other feature. This applies to  
2 communicating with your family members, your employer, the media  
3 or the press, and the people involved in the trial. If you're  
4 asked or approached in any way about your jury service or  
5 anything about the case, you must respond that you've been  
6 ordered not to discuss the matter and to report the contact to  
7 the Court.

8 Do not read, watch, or listen to any news or media  
9 accounts or commentary about the case or anything to do with it.  
10 Do not do any research such as consulting dictionaries,  
11 searching the Internet, or using other reference materials, and  
12 do not make any investigation or in any other way try to learn  
13 about the case on your own. The law requires these restrictions  
14 to ensure the parties have a fair trial based on the same  
15 evidence that each party has had an opportunity to address.

16 A juror who violates these restrictions jeopardizes  
17 the fairness of these proceedings, and a mistrial could result  
18 that would require the entire trial process to start over.

19 If any juror is exposed to any outside information,  
20 please notify the Court immediately.

21 Some of you have taken notes during the trial.  
22 Whether or not you took notes, you should rely on your memory of  
23 what was said. Notes are only to assist your memory. You  
24 should not be overly influenced by your notes or those of your  
25 fellow jurors.

The punishment provided by law for this crime is for the Court to decide. You may not consider punishment in deciding whether the government has proved its case against the defendant beyond a reasonable doubt.

A verdict form has been prepared for you. After you have reached unanimous agreement on a verdict, your foreperson should complete the verdict form according to your deliberations, sign and date it, and advise the bailiff that you're ready to return to the courtroom.

If it becomes necessary during your deliberations to communicate with me, you may send a note through the bailiff signed by any one or more of you. No member of the jury should ever attempt to communicate with me, except by a signed writing, and I will respond to the jury concerning the case only in writing or here in open court. If you send out a question, I will consult with the lawyers before answering it, which may take some time. You may continue your deliberations while waiting for the answer to any question.

Remember that you are not to tell anyone, including me, how the jury stands numerically or otherwise on any question submitted to you, including the question of the guilt of the defendant, until after you have reached a unanimous verdict or have been discharged.

Brief sidebar, please, with counsel.

(Sidebar conference commenced.)

1 THE COURT: I forgot to ask, is it okay if we excuse  
2 the alternates and just keep them on call, or do you want to  
3 have them come in?

4 MR. LOMBARD: That's okay.

5 MS. HENDRICKSON: That's fine.

6 (Sidebar conference ended.)

7 THE COURT: I am going to ask the alternates, when I  
8 tell you to wait out in the hall, Ms. Plato will come and give  
9 you some instructions. We're going to ask you to remain on  
10 call -- that is, you have to be available to get here relatively  
11 quickly, half an hour or so if we need you to substitute in for  
12 one of the other jurors, but we won't make you come back every  
13 day and sit here while the jury is deliberating because  
14 alternates don't go back into the jury room.

15 The first thing I'll ask our jurors do is to let us  
16 know what you'd like your schedule to be. You can stay today  
17 until 2:00 or you can stay longer, if you'd like. And tomorrow  
18 you can do the 8:00 to 2:00 schedule or you can deliberate for a  
19 longer period of time and take a lunch break if you'd prefer  
20 that. We need you to spend about a good six hours so we can  
21 legitimately tell your employers that you were serving jury duty  
22 all day. Tomorrow is the day I have a meeting at lunch so you  
23 can certainly continue to deliberate, but if you came -- if you  
24 reached a verdict during that period of time, then you'd have to  
25 wait for me to get back from my meeting to take it, so you can

1 consider that in your evaluation of what your schedule should  
2 be.

3 Ms. Plato and the lawyers are working on gathering the  
4 exhibits together to get them to you. You will have the verdict  
5 form, and my secretary is out copying all sets of jury  
6 instructions for you, and we will be getting that back to you  
7 just as soon as we can, so don't send out a note saying *when are*  
8 *we getting stuff*. We are working as hard as we can to get it  
9 ready for you.

10 Ms. Plato, would you swear in our bailiff.

11 THE CLERK: Yes, your Honor.

12 Bailiff sworn

13 THE COURT: Thank you.

14 Our alternates can wait out in the hall. Ms. Plato  
15 will come give you some instructions. If you have stuff in the  
16 jury room to pick up, you can get that first and then just wait  
17 outside.

18 (Jury Out)

19 THE COURT: We'll wait until the jury lets us know  
20 what their schedule will be, and then I'm not sure where you  
21 guys are even staying. Are you going to be at the U.S.  
22 Attorney's office or are --

23 MS. HENDRICKSON: We will probably hang around.

24 THE COURT: Make sure we have your cell phones so  
25 Ms. Plato can contact you.

1 And, Mr. Lombard, what's your plan?

2 MR. LOMBARD: Be available to the Court.

3 THE COURT: How far away are you?

4 MR. LOMBARD: Well, my office is in Santa Monica, but  
5 I will be here during the time that the jury is deliberating.

6 THE COURT: Okay. Make sure Ms. Plato has a good way  
7 to contact you.

8 Also oftentimes the jury sends out a note with  
9 something like *we need markers for the board* or *we need Post-Its*  
10 or something like that. If you don't have any objection to that  
11 type of question, I will just send them the markers or the  
12 Post-Its. Anything even colorably substantive, I'll get you  
13 here if that's all right, Mr. Lombard?

14 MR. LOMBARD: That's okay with me.

15 THE COURT: You wanted to make a motion, I assume?

16 MR. LOMBARD: Yes, your Honor. I do.

17 I would submit that viewing the evidence in the light  
18 most favorable to the government and having heard the testimony  
19 and reviewed the documents, specifically with the issue of the  
20 Installment Agreement and the testimony of Lyly Nguyen, that the  
21 government hasn't carried their burden. And even when you view  
22 it in its light most favorable, certainly Mr. Nurick had the  
23 intent to pay through an Installment Agreement. He hired a  
24 lawyer. His lawyer testified to that advice that she gave him.  
25 He disclosed the information to her, and to the extent that even

1 if the Court were to say well, let's view the evidence in the  
2 light most favorable and that he owns Luna de Los Crestones, it  
3 doesn't negate the point of his intent to pay through an  
4 Installment Agreement. And now, that might go to the issue of  
5 Offer in Compromise and whether or not it was included, but I  
6 would submit that there is nothing contradicting Mr. Nurick's  
7 use of a lawyer to file the Installment Agreement request. His  
8 lawyer didn't do it. She didn't recall having not done it, but  
9 she certainly agreed and it's uncontradicted that that's her  
10 that filled out the form, and it's his signature and his wife's  
11 signature. So I would submit on that.

12 THE COURT: From the government?

13 MS. HENDRICKSON: Your Honor, the evidence in the  
14 light most favorable to the government, the government has  
15 proved that Mr. Nurick committed several affirmative acts of  
16 evasion. The government has proved through the bank records and  
17 through the testimony that Luna de Los Crestones was a bank  
18 account that he was controlling, that he was freely spending.  
19 He admitted to that.

20 Ms. Nguyen's testimony, I think, regarding the  
21 Installment Agreement must be taken in context with everything  
22 else. There was an Installment Agreement dated January of 2001.  
23 The Offer in Compromise was dated in April of 2001. There are a  
24 lot of things going back and forth, and I think it's --  
25 certainly at this point in the case it would be incorrect to

1 isolate only the Installment Agreement and say that you could  
2 ignore the rest of the other evidence and say that Mr. Nurick  
3 relied on Ms. Nguyen. I think the testimony and the documents  
4 show that that's not the case and that Mr. Nurick did  
5 intentionally commit tax evasion, and the jury should be  
6 permitted to decide.

7 THE COURT: My only question at this point -- and I  
8 would either deny the motion or simply take it under submission,  
9 but my only question at this point is with regard to the  
10 Affirmative Act No. 5, and is that the -- I should say 5-2. Is  
11 that what she was allegedly giving him -- I shouldn't say  
12 *allegedly*. I'm not sure if you're drawing a distinction between  
13 the advice on the bank account versus the trust because the  
14 question on the form, I think, was a slightly different form --  
15 was related to a trust as opposed to a bank account. So I'm not  
16 sure what the government's position is on that.

17 MS. HENDRICKSON: Your Honor, on the Offer in  
18 Compromise, there were two separate sections. There was the  
19 19-F where he was asked and checked *no*, and there was discussion  
20 and testimony by Ms. Nguyen and by Mr. Nurick about his  
21 confusion over the ownership of the trust itself. Ms. Nguyen  
22 was very clear that she did not know about the bank account in  
23 the name of Aztec.

24 THE COURT: Mr. Lombard?

25 MR. LOMBARD: That was it. Just for the record, it

1 was a Rule 29 motion. I'm sure the language makes it clear --

2 THE COURT: Yes.

3 MR. LOMBARD: -- but the Court invited me to make a  
4 motion, and I'm making a Rule 29 motion.

5 THE COURT: I'll take that under submission.

6 And you'll all just -- one person from each side will  
7 stay here until we have the note from the jury with their  
8 schedule, and Ms. Plato will let me know when we have that.

9 (Recess taken)

10 THE COURT: The jury has indicated that they will stay  
11 until 2:00 p.m. today, and then the schedule for the rest of the  
12 week will be 8:00 a.m. until 2:00 p.m., so make sure you're not  
13 too far away until 2:00 today. And then we'll expect Ms. Plato  
14 will be able to get hold of you quickly if we need you from 8:00  
15 to 2:00. And then at the end of each day, even if it's 2:00, do  
16 not leave until you call Ms. Plato and verify that the jury has  
17 gone. Thank you.

18 (Jury deliberated from 1:03 p.m. to 2:05 p.m.)

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20 (Proceedings adjourned at 2:05 p.m.)

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## 1 CERTIFICATE OF OFFICIAL REPORTER

2  
3 COUNTY OF LOS ANGELES )  
4 STATE OF CALIFORNIA )

5  
6  
7 I, Pamela A. Batalo, Federal Official Realtime Court  
8 Reporter, Registered Professional Reporter, in and for the  
9 United States District Court for the Central District of  
10 California, do hereby certify that pursuant to Section 753,  
11 Title 18, United States Code, that the foregoing is a true and  
12 correct transcript of the stenographically reported proceedings  
13 held in the above-entitled matter and that the transcript page  
14 format is in conformance with the regulations of the Judicial  
15 Conference of the United States.

16  
17 Date: June 1, 2012  
18

19  
20 /s/ Pamela A. Batalo  
21 Pamela A. Batalo, CSR No. 3593, FCRR, RMR  
22 Federal Official Court Reporter  
23  
24  
25

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